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JOHN F. DAVIS, C

NO. 36, Original

**IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969**

THE STATE OF TEXAS, PLAINTIFF

v.

THE STATE OF LOUISIANA

**MOTION FOR LEAVE TO FILE COMPLAINT,
COMPLAINT AND BRIEF IN SUPPORT OF
MOTION**

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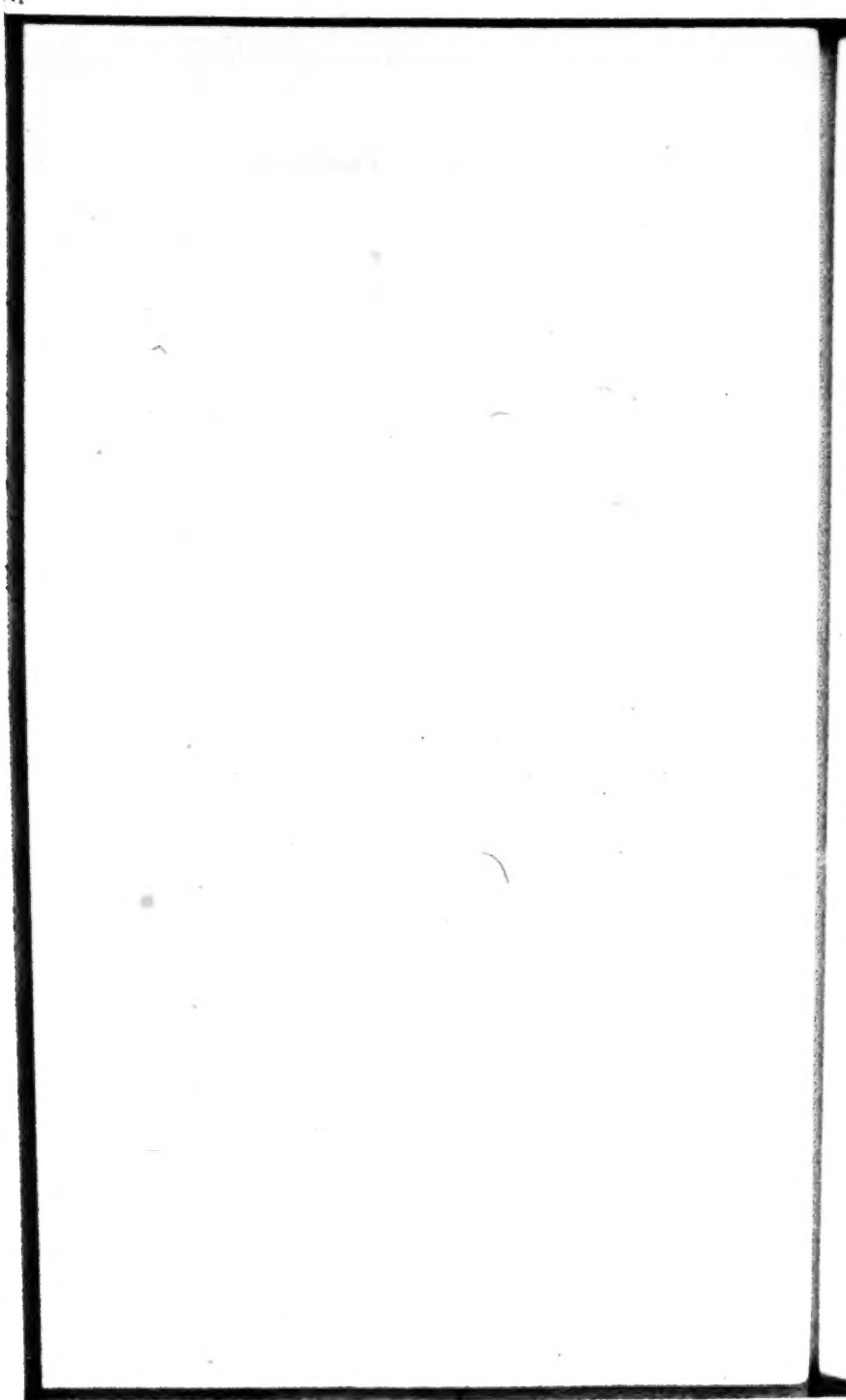
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NO.-----, Original

THE STATE OF TEXAS, PLAINTIFF

v.

THE STATE OF LOUISIANA

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Texas asks leave of the Court to file its complaint against the State of Louisiana submitted herewith.

CRAWFORD C. MARTIN
Attorney General of Texas

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**IN THE
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THE STATE OF TEXAS, PLAINTIFF

v.

THE STATE OF LOUISIANA

COMPLAINT

The State of Texas, by its Attorney General, brings this suit against the Defendant, the State of Louisiana, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

II

By act of the United States Congress approved July 5, 1848, consent was given to the State of Texas to extend its eastern boundary so as to include that portion of the western half of Sabine River (including Sabine Lake and Sabine Pass) from the mouth of said River as far north as the thirty-second degree of north latitude. 9 Stat. 245.

Pursuant thereto, by Act approved November 24, 1849, the Legislature of the State of Texas so extended the eastern boundary of the State. 3 Gammels Laws of Texas 442.

III

Since November 24, 1849, the State of Texas has been and now is entitled to the jurisdiction of its constitution and laws over and the ownership of the western half of Sabine River, Sabine Lake and Sabine Pass from the mouth of the River on the Gulf of Mexico to the thirty-second degree of north latitude. Since the aforesaid date the State of Texas has exercised exclusive jurisdiction, sovereignty, possession and ownership over the western half of said streams, subject only to the constitutional rights and functions of the United States.

IV

Sabine Lake, Sabine Pass, and that portion of the Sabine River above described form a continuous body of navigable water and are collectively referred to in treaties and laws as the "Sabine River." Together, they will be so referred to in this Complaint.

V

From the time of the Louisiana Purchase in 1803, 8 Stat. 200, until November 24, 1849, the western half of that portion of Sabine River between its mouth in the Gulf of Mexico and the thirty-second degree of north latitude was a portion of the territory of the United States and was not within the boundaries of any state. During such period, the United States exercised exclusive jurisdiction and sovereignty over and possession and ownership of the area.

VI

In 1811, the citizens of that portion of the Louisiana Territory lying east of the middle of Sabine River and within other stated boundaries were authorized by the Congress of the United States to form a State government and apply for admission to the Union. 2 Stat. 641. After forming a government and adopting a Constitution calling for a western boundary . . . "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude" . . . Louisiana was admitted as a State, with the Act of Admission again repeating the western boundary of the State as being in the middle of the Sabine River. 2 Stat. 701.

VII

The State of Louisiana has never had and does not now have any jurisdiction over or ownership of the western half of Sabine River. Such area has never been within the boundaries of the State of Louisiana, and that State has never exercised any jurisdiction, sovereignty, possession or ownership over same. On the contrary, the State of Louisiana, for more than a century, recognized and acquiesced in the jurisdiction, possession, and exercise of sovereignty and dominion over such area by the United States from 1812 until November 24, 1849, and by the State of Texas from November 24, 1849, until recently when it began to assert contrary claims described in Paragraph VIII hereof.

Among Louisiana's long and continuous acts of recognition and acquiescence in the jurisdiction, possession and exercise of sovereignty and dominion first by

the United States and then by Texas are the following:

A. In 1812, Louisiana adopted its State Constitution as aforesaid, with its western boundary in the middle of the Sabine River. It was with this boundary that Louisiana sought and was granted admission to the Union, and this boundary act has not been changed by Louisiana.

B. On April 28, 1848, the Louisiana Legislature adopted a Resolution instructing its members of Congress to seek passage of a law permitting the State to extend its jurisdiction over the western half of the Sabine, the preamble of which said:

Whereas the constitution and laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to western bank thereof; and that it is of importance to the citizens living contiguous thereto . . . that the jurisdiction of some State should be extended over said territory . . . Senate Documents, 30th Congress, 1st Session, 1848, Miscellaneous No. 135.

C. The State of Louisiana acquiesced in and did not contest the action of Congress on July 5, 1848 authorizing Texas to extend its boundary to the middle of the Sabine or the action of Texas so extending its boundary, an acquiescence and failure to contest which has continued during the entire 120 years that Texas has exercised jurisdiction, sovereignty, possession and ownership over the area.

D. Upon extending its State boundary to the middle of the Sabine on November 24, 1849, Texas in the same Act extended the jurisdiction of its adjacent counties to the middle of the stream. Since that date, its

State laws have extended to and have been enforced by State and county officials on the western half of the Sabine. Louisiana has not extended its boundary, the boundaries of its adjacent parishes, or its laws over the western half of the Sabine, but has continuously acquiesced in the jurisdiction of Texas laws and the enforcement of same by Texas State and county officials in such area. As early as 1901, the Supreme Court of Louisiana held that . . . "the middle of the Sabine River is the boundary line between Louisiana and Texas . . .", and that Louisiana could not enforce its liquor laws west of that line. *State v. Burton*, 29 So. 970 (1901). There have been other Louisiana Supreme Court decisions to the same effect and none to the contrary.

E. On March 19, 1857, the Louisiana Legislature appropriated money to improve the Sabine River for navigation provided Texas "has appropriated at least an equal sum for the same purpose. . . ." Texas has continuously appropriated and expended funds for improvement of the Sabine and for its one-half of the State cost of bridges and ferries across the Sabine, and in each instance, Louisiana not only acquiesced but encouraged and agreed to Texas' exercise of this type of sovereignty to the middle of the stream. Louisiana has never exercised the responsibility for construction of bridges on the western half of the stream.

F. Texas has continuously passed and enforced special laws regulating the taking of game and fish from the western half of the Sabine. Louisiana has acquiesced therein and has never enacted or enforced laws relating to game and fish or any other activities west of the middle of the Sabine.

VIII

In spite of its long recognition and acquiescence in Texas' boundary and sovereignty over the western half of the Sabine, the State of Louisiana, acting through its Attorney General, is now asserting and claiming some right, title and jurisdiction adverse to the State of Texas in that portion of the Sabine River lying between the middle of the stream and the west bank thereof. The Attorney General of Louisiana has notified the Texas Attorney General and Commissioner of the General Land Office of such adverse claim; has protested the leasing of the submerged land under the western half of the Sabine for the recovery of valuable minerals; has notified Texas lessees of such adverse claim; and has threatened lawsuits against the State of Texas and its lessees.

There is urgent need for the exploration and development of the mineral resources of the area in controversy, and this is being interfered with and obstructed and will continue to be interfered with and obstructed by the State of Louisiana, thereby causing great and irreparable damage to the State of Texas unless the rights of Texas are established and confirmed by this Court. The State of Texas has made diligent efforts to obtain settlement of the issue by compact with Louisiana, but these efforts have failed. Therefore, Texas has no other adequate remedy than that which is sought in this Complaint.

IX

The original jurisdiction of this Court is invoked because there is urgent need for prompt and final settlement of the controversy, and because the fundamen-

tal question in issue is the location of that portion of the boundary between the States of Texas and Louisiana lying from the mouth of the Sabine River on the Gulf of Mexico to the thirty-second degree of north latitude.

WHEREFORE, the State of Texas prays that a decree be entered declaring its rights against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River (including Sabine Lake and Sabine Pass) from the mouth of the river on the Gulf of Mexico to the thirty-second degree of north latitude, and that such portion of the boundary between the two States be decreed to be in the middle of said stream.

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BY: _____
CRAWFORD C. MARTIN

BRIEF IN SUPPORT OF MOTION

Jurisdiction

The State of Texas seeks to bring this suit against the State of Louisiana under the authority of Article III, Section 2, Clause 2, of the Constitution of the United States.

Statement

The purpose of this litigation is to establish and confirm the boundary between the States of Texas and Louisiana as the middle of the Sabine River¹ from the mouth of said river on the Gulf of Mexico to the thirty-second degree of north latitude, and to establish the rights of Texas to jurisdiction over and ownership of the western half of the Sabine River from its mouth to the thirty-second degree of north latitude, subject only to the constitutional rights and powers of the United States.

Under the Louisiana Purchase of 1803 the United States acquired from France a vast area between the Mississippi River and the Rocky Mountains from which all or part of thirteen States were carved.² Until 1819, the United States claimed that the western boundary of the Purchase was the Rio Grande River and that it thus included the present State of Texas.³

¹Use of the term "Sabine River" herein includes Sabine Lake and Sabine Pass, all of which constitute a continuous body of navigable waters collectively referred to in various Treaties and Acts of Congress as the "Sabine River."

²Encyclopedia Britannica (1965), vol. 14, p. 358.

³Adams, *History of the United States*, II, 5-7, 298; Channing, *History of the United States*, IV, 331-333; Jefferson's "Examination" in *Documents Relating to the Purchase and*

In the meantime, Congress authorized the inhabitants of a certain portion of the Louisiana Purchase to form a government and seek admission as the State of Louisiana. The Enabling Act specifically defined the area over which such authority was granted, with the relevant portion of the western boundary described:

... "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude." ...

The inhabitants of this specifically defined area carved out of the Louisiana Territory formed their government and adopted the State Constitution of Louisiana, which described the western boundary of the State in exactly the same words as quoted above.¹ The Act of Admission by the Congress, approved April 8, 1812, again recited the western boundary in the same language as above.² This boundary in the middle of the Sabine River from its mouth to the thirty-second degree of north latitude is the only boundary of Louisiana between such points ever established or assented to by the Congress of the United States or by the Legislature or the people of the State of Louisiana.

Exploration of Louisiana (Houghton Mifflin Co., 1904). As late as June 2, 1818, President Monroe, through Secretary of State Adams, sent an emissary to call upon a colony of Napoleonic exiles to remove themselves from their establishment in Texas on the Trinity River and at Galveston, claiming that the places were within the territorial limits of the United States. Adams to George Graham, June 2, 1818, MS. Archives, Department of State. See also *Adams Memoirs*, IV, 97-100 and Reeves, *The Napoleonic Exiles in America*, 1815-1819, the Johns Hopkins Press, 1905, pp. 93-106.

¹2 Stat. 641.

²West's Louisiana Statutes Annot., Constitution, vol. 3, p. 511.

³2 Stat. 701.

By the Treaty with Spain in 1819, the United States relinquished its claim to Texas, but fixed the west bank of the Sabine River as the western boundary line between Spain and Mexico,' thus leaving the western half of the Sabine as part of the territory of the United States unincorporated within the boundary of Louisiana or any other State.'

By 1848, Texas had become a member of the Union, and both Texas and Louisiana petitioned the Congress for consent to extend their jurisdiction over the western half of the Sabine.' The Congress decided the issue in favor of Texas on July 5, 1848 by the following enactment:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine

'8 Stat. 252. Article 3 states: "The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude; . . ."

"The State of Louisiana officially recognized this status of the western half of the Sabine in a Resolution quoted in Paragraph VII-B of the Complaint wherein the Louisiana Legislature recited that "the constitution and laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof . . .". Senate Documents, 30th Congress, 1st Session, 1848, Miscellaneous No. 135.

"The Legislature of Texas petitioned its members of Congress to request such action on April 17, 1848, and the Legislature of Louisiana instructed its members of Congress to do likewise on April 28, 1848. See copies of these Resolutions in Senate Documents, 30th Congress, 1st Session, 1848, Miscellaneous No. 123 and 135, respectively.

Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude. 9 Stat. 245.

By Act of its Legislature approved November 24, 1849, Texas so extended its boundary to include the western half of the Sabine as authorized by the Congress. 3 Gammels Laws of Texas 442. As a result, Texas acquired not only State sovereignty and jurisdiction over the area but also ownership of the submerged land beneath the western half of the navigable stream." Since November 24, 1849, the State of Texas has continuously exercised its sovereignty, jurisdiction, possession and ownership over the area, and the State of Louisiana has continuously recognized and acquiesced in the exercise of such State powers, rights and functions by the State of Texas, until recent adverse claims were asserted by the Attorney General of Louisiana.

Some of the series of acts of long recognition and acquiescence on the part of Louisiana are recited in the Complaint. Others of equal importance can and will be cited. They include continuous recognition and holdings by the Supreme Court of Louisiana that "... the middle of the Sabine River is the boundary line between Texas and Louisiana . . . ;"¹ the fact that Texas has continuously extended its laws and the enforcement thereof to the middle of the Sabine, while Louisiana has never extended or enforced its laws west

¹This rule was announced in *Pollard's Lessee v. Hagan*, 3 Howard 212 and followed in *Martin v. Waddell*, 16 Peters, 367, 410, and numerous other decisions of this Court relating to inland navigable waters within State boundaries. In any event, this submerged land within the boundary of Texas as approved by the Congress was quit-claimed and conveyed to the State by the Submerged Lands Act of 1953, 67 Stat. 29.

²*State v. Burton*, 29 So. 970 (1901).

of the middle of the Sabine; and the fact that Texas, with Louisiana's acquiescence and encouragement, has borne the cost of all bridges and other improvements to the boundary in the middle of the river."

Neither has Louisiana protested or contested the official maps prepared over the years by agencies of the United States showing the boundary in the middle of the Sabine. On the contrary, such maps have been used and distributed by the State of Louisiana in their mineral leasing and other activities."

Argument

I

There is a controversy between the parties requiring adjudication

Despite the Act of Congress in 1848 permitting Texas

"The most recent agreement and mutual action of the two States in improving and sharing the cost and benefits from improvements on the Sabine River is the completion of Toledo Bend Dam, which forms on the Sabine one of the largest man-made reservoirs in the United States. While the Compact for this project (Art. IX) expressly states that it shall not constitute evidence of the boundary location between the two States, its provisions call for and have resulted in equal sharing of the cost of construction of the reservoir and an equal share in the waters derived from such impoundment. 68 Stat. 690.

"See Map of the "Port Arthur Quadrangle" compiled in 1957 by the U. S. Army Corps of Engineers, which states on its face that it is "for sale by the U. S. Geological Survey - - - and by the State of Louisiana, Department of Public Works, Baton Rouge 4, Louisiana"; Map No. NH 15-8, compiled in 1956 by the U. S. Army Map Service, Corps of Engineers, and published by the U. S. Geological Survey; and the "Texas-Orange Quadrangle" published by the U. S. Geological Survey with the assistance of the U. S. Army Air Corps and the U. S. Coast and Geodetic Survey, edition of 1932.

to extend its boundary to the middle of the Sabine, the State's action pursuant thereto, and more than a century of recognition and acquiescence therein by the State of Louisiana, there now exists a dispute and controversy between the two States as a result of Louisiana's recent adverse claim to jurisdiction and ownership of the entire river. This arose only after valuable minerals were discovered in the subsoil and Texas began selling leases on portions under the western half of the stream for exploration and development. Louisiana, acting through its Attorney General, is now protesting the actions of Texas and its lessees and will continue to harass and obstruct development of valuable minerals unless the boundary issue is settled by final adjudication of this Court. The Legislature of the State of Louisiana recognized the need for an adjudication when it passed an Act in 1942 authorizing the Attorney General of Louisiana to institute proceedings "to locate, rectify and establish the true and correct boundary,"¹ but no action has been taken pursuant thereto.

Repeated efforts have been made by Texas since 1942 to obtain recognition of its lawful boundary through Compact with Louisiana, but these efforts have failed. Irreparable damage will result to the State of Texas if the issue is not promptly adjudicated, and the State has no other adequate remedy.

II

This is an appropriate case for exercise of this original jurisdiction of this Court

This case is one which eminently justifies invoking

¹Act 295, approved July 12, 1942, Acts of the Louisiana Legislature . . . 1942.

of the original jurisdiction of this Court. It is not a case of merely monetary importance, nor is it one of only local or transitory significance. It involves the boundary line between two States and the respective extent of the jurisdiction of their constitutions and laws.

Under Article III, Section 2, Clause 2 of the Constitution of the United States and the decisions of this Court in *Virginia v. Tennessee*, 148 U. S. 503; *Rhode Island v. Massachusetts*, 12 Peters 657 and *Durfee v. Duke*, 375 U. S. 106, the present case is a proper one for the exercise of this jurisdiction.

Conclusion

It is respectfully submitted that the motion for leave to file the Complaint should be granted.

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OCTOBER, 1969

By: _____
CRAWFORD C. MARTIN

Certificate

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the 9th day of December, 1969, I served copies of the foregoing motion for leave to file complaint, by first class mail, postage prepaid, to the office of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas

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No. 36 ORIGINAL

JOHN F. DAVIS, CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

**OPPOSITION OF THE STATE OF LOUISIANA TO
THE FILING OF THE COMPLAINT BY THE
STATE OF TEXAS, AND MEMORANDUM
IN SUPPORT THEREOF**

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**OLIVER P. STOCKWELL,
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**JACOB H. MORRISON,
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OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

OPPOSITION OF THE STATE OF LOUISIANA TO
THE MOTION FILED BY THE
STATE OF TEXAS

The State of Louisiana, herein appearing through its Attorney General, respectfully objects to this Court granting leave to the State of Texas to file the complaint against the State of Louisiana for the reasons, namely:

I.

When Congress of the United States by joint resolution passed on March 1, 1845, consented that the territory properly belonging to the Republic of Texas and within its boundaries might be created into a State to be admitted into the Union, one of the conditions of such consent was that the new State to be formed was subject to the adjustment by the United States of all questions of boundary that might arise with other governments." (5 Stats. 797). The conditions were accepted by Texas. (1 Sayles Early Laws of Texas, Art. 1531.) By the joint resolution

of Congress, approved December 18, 1845, Texas was admitted as one of the States of the Union. (9 Stats. 108.) In admitting Texas as a State into the Union, Congress specifically reserved to the United States the exclusive power to appear on behalf of the State of Texas to settle all boundary disputes that may arise with other governments which includes the State of Louisiana. Therefore, the State of Texas does not have any right to institute the proceedings alleged in its complaint.

II.

The State of Louisiana further urges that no justicable controversy exists over that portion of the boundary between the State of Louisiana and the State of Texas purported to be covered in the complaint. That portion of the boundary was settled in the Treaty between the United States (as a sovereign nation appearing on behalf of the State of Louisiana) and Spain in 1819, which boundary was later confirmed on January 12, 1828 in a Treaty between the United States and the United Mexican States, and which boundary was recognized and ratified in a Treaty between the Republic of Texas and the United States on April 25, 1838. The boundary was actually surveyed and staked from the Gulf of Mexico on the West side of Sabine Pass, Sabine Lake, and Sabine River to the 32d degree of North latitude, and then North to the 33rd degree of North latitude. This boundary having been surveyed and staked is not in controversy, and, therefore, there is no jus-

licable controversy over the location of such boundary.

III.

The Act of Congress of July 5, 1848, Chap. 94, 30th Congress, 9 Stat., relied upon by Texas and referred to in Paragraph VII (C) of the proposed complaint, made no transfer of title to any territory and could not transfer title to any territory of the State of Louisiana to the State of Texas without the specific consent of the Legislature of the State of Louisiana which was not given.¹

IV.

Texas pretends to bring an original action against Louisiana for a judicial determination of the boundary between the two states but sues to have this Court decide a purported title issue, namely; "the jurisdiction over and ownership of the western half of the Sabine River (including Sabine Lake and Sabine Pass) from the mouth of said river on the Gulf of Mexico, to the 32d degree of North latitude." The complaint either sets forth an improper cumulation of actions or makes it uncertain as to the actual character of action to be instituted.

V.

If the court grants permission to the State of Texas to file its complaint, the State of Louisiana reserves the right to plead to the complaint and to

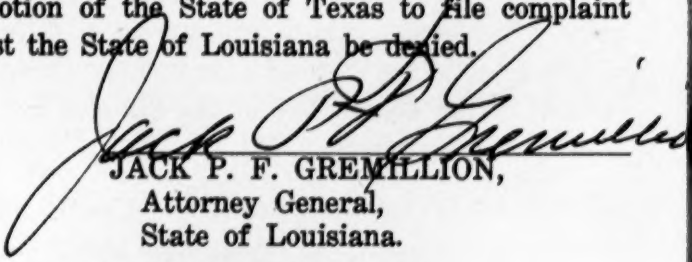
¹ *Louisiana v. Mississippi*, 202 U.S. 1, 26 Sup. Ct. 408 (1906); Art. 4, Sec. 3, U. S. Constitution.

file such other motions, counterclaims and cross claims as the circumstances may justify.

VI.

The State of Louisiana requests permission to be heard on this opposition.

WHEREFORE, the State of Louisiana prays that the motion of the State of Texas to file complaint against the State of Louisiana be denied.



JACK P. F. GREMLION,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

EDWARD M. CARMOUCHE,
Assistant Attorney General.

OLIVER P. STOCKWELL,
Special Assistant Attorney General.

JACOB H. MORRISON,
Special Assistant Attorney General.

MEMORANDUM IN SUPPORT OF OPPOSITION

The State of Louisiana, hereinafter referred to as "Louisiana", denies the right of the State of Texas, hereinafter referred to as "Texas", to bring this action against the State of Louisiana for judicial determination of "the jurisdiction over and ownership of the western half of the Sabine River (including Sabine Lake and Sabine Pass) from the mouth of the river on the Gulf of Mexico, to the 32d degree of North latitude, and that such boundary between the two states be decreed in the middle of said stream."²

1.

THE UNITED STATES HAS THE SOLE RIGHT TO APPEAR ON BEHALF OF THE STATE OF TEXAS TO ADJUST AND SETTLE ANY BOUNDARY DISPUTE BETWEEN LOUISIANA AND TEXAS, IF SUCH DISPUTE EXISTS.

When Texas was admitted into the Union as one of the States of the Union on December 18, 1845 (9 Stats. 108), its eastern boundary and the western boundary of Louisiana had already been established, surveyed and staked starting at the River Sabine in the sea and continuing north along the west bank of Sabine Pass, Sabine Lake and Sabine River to the 32d degree of North latitude, thence by a line due North to the 33rd degree of North latitude.³

² Prayer from Texas' Proposed Complaint.

³ 8 Statutes 252; Senate Document 199, 27th Congress, 2d Session, 1842.

Congress of the United States consented that the territory properly belonging to the Republic of Texas and within its boundaries could be formed into a State on certain conditions, one of which was that when the State was formed, the United States reserved the right to make all adjustments of all questions of boundary that might arise with other governments. (5 Stats. 797). These conditions were accepted by Texas. (1 Sayles Early Laws of Texas, Art. 1531.) Texas was admitted as a State of the Union on December 18, 1845. (9 Stats. 108.) Louisiana maintains that no dispute exists over its boundary in the area described in the complaint but that in any event, the United States is vested with the sole right to appear on behalf of Texas to litigate any question of boundary between Texas and Louisiana by virtue of the reservation made by the United States in admitting Texas into the Union.

When once the United States, acting for the benefit of the State of Louisiana, settled and fixed the western boundary of Louisiana in the Treaties with Spain, Mexico and the Republic of Texas, the boundary could not thereafter be changed by the United States to benefit another State to the prejudice of Louisiana.⁴

⁴ *Louisiana v. Mississippi*, 202 U. S. 1, 26 Sup. Ct. 408, (1906); Art. 4, Sec. 3 U.S. Constitution, which reads as follows:

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed

2.

LOUISIANA FURTHER URGES THAT NO JUSTICIABLE CONTROVERSY EXISTS SINCE THE BOUNDARY BETWEEN LOUISIANA AND TEXAS IN THE AREA DESCRIBED IN THE PROPOSED COMPLAINT OF TEXAS HAS ALREADY BEEN ESTABLISHED.

When the Louisiana Territory was a French possession, its western boundary had not been determined. The Louisiana Territory was secretly transferred by France to Spain on November 3, 1762, with the western boundary still indefinite. The Louisiana Territory was retroceded to France by Spain in 1800. The Louisiana Territory was then purchased by the United States from France in 1803, with the western boundary still in doubt.⁵ By an act of Congress of March 25, 1804 (2 Stats. 283) there was created out of the Louisiana Purchase the Territory of Orleans, "which lies South of the Mississippi Territory and of an East and West line to commence on the Mississippi River, at the 33rd degree of North latitude, and to extend West to the western boundary of the said cession". The western boundary was not given since it had not at that time been established.

by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress."

⁵ Historical Sketch of "Louisiana" and the Louisiana Purchase, by Hank Bowle—Department of Interior Central Land Office—1933.

In November, 1811, a Convention met in New Orleans for the purpose of drafting a Constitution and to create a state of the Territory of Orleans. On April 10, 1812, the Territory of Orleans became the State of Louisiana. A few days later, a portion of West Florida between the Mississippi and Pearl Rivers (the present Florida parishes) was added to the State of Louisiana.*

The act enabling Louisiana to form a State reads in part as follows:

"That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th of April, 1803, between the United States and France, contained within the following limits, that is to say, beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all islands, to the thirty-second degree of latitude, thence due north to the northern-most part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and Lakes Maurepas and Pontchartrain, to the Gulf of Mexico; thence bounded by the said gulf to the place of beginning; including all islands within three leagues of the coast, be and they are hereby authorized to form for themselves a constitution and State government, and to assume such name as they may deem

* Gayre, *History of Louisiana*, Vol. 4, pp. 265-275; see also, *Encyclopedia Britannica*, Vol. 14, 14th Edition, p. 429.

proper, under the provisions hereinafter mentioned." ⁷

Chambers, in his *History of Louisiana*, Vol. 1, p. 506 noted that the bill authorizing the creation of the State of Louisiana out of the Territory of Orleans fixed the Sabine as the western boundary even though Spain had never conceded the western limits of the Orleans Territory extended that far.

Congress admitted the new State into the Union and the President approved the Act of Congress on April 8, 1812 (2 Stat. 701.)

It, therefore, becomes quite obvious from the above that the new State of Louisiana was to encompass the whole of the Orleans Territory which was created by an Act of Congress in 1804, and the area on the east known as the Florida Parishes.

The question arose concerning the location of the Western boundary of the Orleans Territory which was to be the Western boundary of the State of Louisiana. The location of this western boundary had not been established when Louisiana was admitted as a State, for the United States was still negotiating with Spain at the time of the admission of Louisiana to statehood as to its western boundary.⁸

This dispute, as to the Western limits of the Or-

⁷ Annals of Congress, 1810-1811, p. 1326; Alcee Fortier, "A History of Louisiana"; Martin's "History of Louisiana."

⁸ Thomas Jefferson, "The Limits and Bounds of Louisiana;" Marshall, "History of the Western Boundary of the Louisiana Purchase;" Phillip Coolidge, "Diplomacy and the Borderlands" (the Adams-Onis Treaty).

leans Territory continued between the United States and Spain. Finally a neutral zone was agreed to between General Wilkinson, representing the United States, and Lieutenant Colonel Herrera, representing Spain, in 1806. The neutral zone was ostensibly between the Sabine River to the 32d degree of North latitude, thence a straight line north to the Red River as the west boundary, thence a straight line running from the Rio Roxo to the intersection of the Mermen-to River a few miles from its mouth, thence the Mermento River to the Gulf of Mexico as the eastern boundary, and the Gulf of Mexico as the southern boundary. This neutral zone existed from 1806 to 1821. The condition that existed is graphically portrayed in "The Neutral Ground between Louisiana and Texas, 1806 to 1828".⁹

Louisiana had no authority to negotiate a boundary dispute with a foreign power. This is made very clear by the United States Constitution wherein this right is reserved to the Federal government. (See United States Constitution, Article I, Section 10, Clause 1, Article II, Section 2.)

To illustrate the disagreement over the western boundary, we call the Court's attention to some of the negotiations. On October 24, 1818, the Spanish Minister "to avoid all cause of dispute in the future" proposed to Mr. Adams, Secretary of State, that the

⁹ Haggard, "The Neutral Zone Between Louisiana and Texas," Vol. 28 *The Louisiana and Historical Quarterly*, No. 4, (Oct. 1945) See also: Document 190, H. of R., 25th Congress, 2d Session (1838).

limits of possession of the two governments west of the Mississippi should be designated by a line beginning "on the Gulf of Mexico, between the Rivers Mermento and Calcasia, following the Arroyo Hondo between the Los Adaes and Natchitoches crossing the Rio Roxo or Red Rivers at the 32d degree of latitude, etc." (Annals of Congress, 15th Congress, 2d Session, 1819, p. 1900.) This proposal was not agreeable to Mr. Adams and finally Mr. Adams proposed to the Spanish Minister as a final proposal that Article III read that "the boundary line between the two countries west of the Mississippi shall begin on the Gulf of Mexico at the mouth of the River Sabine in the sea, continuing north along the west bank of that river to the 32d degree of latitude; thence by a line due north to the 32d degree of latitude where it strikes Rio Roxo of Natchitoches, etc." This was finally agreed to as the dividing line by the Treaty of 1819. (Annals of Congress, Appnd., 16th Congress, 2d Session, pp. 2120, 2121, 2123.) *It was also provided in the same Treaty that "all the islands in the Sabine and the said River Red and Arkansas River throughout the country thus described belong to the United States; but the use of the waters and navigation of the Sabine to the sea and of the said Rivers Rio Roxo and Arkansas throughout the extent of the said boundary on their respective banks shall be common to the respective inhabitants of both nations."* (Underscore ours) ¹⁰

¹⁰ By this Treaty, which fixed the right of the parties, it is important to note the "use of the waters and navigation of

By the Treaty of 1828 between the United States of America and the United Mexican States, concluded January 12, 1828, the dividing limits of the respective countries were declared to be the same as those fixed by the Treaty of 1819. (8 Stats. 372.)

The Republic of Texas by an Act passed December 19, 1836, declared that the civil and political jurisdiction of that Republic recognized this boundary. (1 Sayles Early Laws of Texas, Art. 257.)

On the 25th of April, 1838, a Convention was concluded between the United States and the Republic of Texas for marking the boundary referred to in the Treaty of 1828. A Joint Commission was appointed with representatives of the Republic of Texas and the United States to survey out the boundary between the Republic of Texas and the State of Louisiana. The survey was completed.¹¹ This formed the western boundary of Louisiana.

The findings of the commission necessitated a resurvey of that portion of the lands of Louisiana transversed by the newly marked boundary. Under

the Sabine to the sea. . . throughout the extent of such boundary on their respective banks shall be common to the inhabitants of both nations." It is clear from this language that neither the inhabitants of Louisiana nor of Texas have the exclusive use of the waters in the Sabine River or to navigate on these waters. But inasmuch as Louisiana had long exercised the jurisdiction mentioned, Congress wanted to be sure that Texas had the same common use of the Sabine, and that was the reason for the passage of the Act of Congress of July 5, 1848, 9 Stat. 245.

¹¹ Senate Document 199, 27th Congress, 2d Session, 1842, pp. 297 et seq. See also: 5 Stat. 312.

contract dated December 23, 1845, George W. Moss, Deputy Surveyor, was designated to retrace the meridional boundary and connect thereto the survey of the lands in Louisiana. Moss performed this work in the first quarter of 1846, and his notes and township plats were approved at Donaldsonville, Louisiana, by the Surveyor General of Louisiana on July 4, 1846. Louisiana has occupied the land portion of the boundary as thus established from the 32d degree of North Latitude to the 33rd degree of North latitude. The remainder of the boundary is a water boundary along the west bank of Sabine Pass, Sabine Lake and Sabine River.

By joint resolution passed on March 1, 1845, Congress consented that the territory properly belonging to the Republic of Texas and within its boundaries might be created into a State to be admitted to the Union. One of the conditions of such consent being that a new State be formed, subject to the adjustment by the United States of all questions of boundary that might arise with other governments. (5 Stats. 797). The conditions were accepted by Texas. (1 Sayles Early Laws of Texas, Art. 1531). By the joint resolution of Congress approved December 18, 1845, Texas was admitted as one of the States of the Union on an equal footing in all respects with the original states. (9 Stats. 108).

It thus becomes obvious that the western boundary of the State of Louisiana was that boundary established by the United States in the Treaty of 1819, and confirmed in the Treaty between the United

States and the United Mexican States in 1828, and again recognized in the Treaty between the Republic of Texas and the United States on April 25, 1838, and which was finally surveyed and marked on the ground.

At this point, there was nothing that the United States could do to change this boundary of the State of Louisiana.¹² This is actually not an action to establish a boundary. The boundary has already been established. This is a case where one State is attempting to acquire the property of another State by prescription.

3.

THE COMPLAINT WHICH TEXAS PROPOSES TO FILE AGAINST LOUISIANA CONSTITUTES EITHER AN IMPROPER CUMULATION OF ACTIONS OR MAKES IT CONJECTURAL AS TO THE NATURE OF THE ACTION PLEADED.

Texas confuses the issue, if any exists at all, in confecting its complaint, by asking the Court to decide whether that State or the State of Louisiana has "the jurisdiction over and ownership of the western half of the Sabine River (including Sabine Lake and Sabine Pass) from the mouth of the river on the Gulf of Mexico to the thirty-second degree of North latitude," and also requests the Court to adjudicate "*such portion* of the boundary between the two

¹² *Louisiana v. Mississippi*, 202 U.S. 1, 26 Sup. Ct. 408, (1906); Art. 4, Sec. 3 U.S. Constitution.

states." It appears that Texas has improperly cumulated two separate and distinct actions, one of title and the other of boundary; moreover, the actual dispute, if one even remotely exists, is the boundary, the entirety of the boundary, between the two States, not the location of the boundary of the western half of the Sabine River. The boundary could not possibly lie between the center and the west bank of the river.

No dispute whatever exists, or could remotely exist, as to jurisdiction. The use of the Sabine River is common to both states, and Congress made that common use of the Sabine River even more definite by adopting the Act of July 5, 1848, 9 Stat. 245. This Act did not purport to transfer title since Congress recognized that it had no *power to transfer the property* of one State to another.

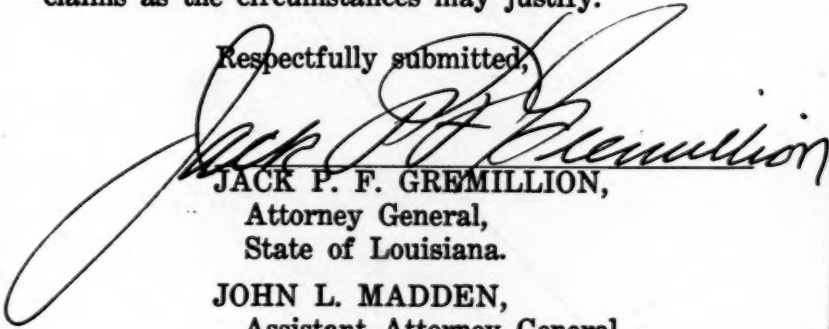
It is not contended that a title action could not be instituted by Texas against Louisiana in this Court, provided a justiciable controversy is clearly shown to exist in the complaint, but Louisiana is entitled to determine from the complaint itself whether Texas proposes by its complaint to institute a title action, a boundary action, or a cumulation of such actions against Louisiana, for only such knowledge would enable Louisiana to plead relevantly, intelligently and safely; moreover, different principles of law are involved in the two actions mentioned. Only the United States could bring a boundary action on behalf of Texas. Even if a dispute of some character exists between the two states, the complaint should be specific and not leave the question open to con-

jecture as to the specific dispute on which the action is predicated, and that such particular dispute is set forth in the complaint clearly enough to reveal the existence of a justiciable controversy.

CONCLUSION

By filing these objections, Louisiana does not admit the correctness of any allegation or allegations made in the complaint which Texas proposes to file. Should this court, with or without oral argument, grant leave to Texas to file such complaint, Louisiana reserves the right to plead to the complaint and/or interpose such motions, counterclaims and cross claims as the circumstances may justify.

Respectfully submitted,



JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

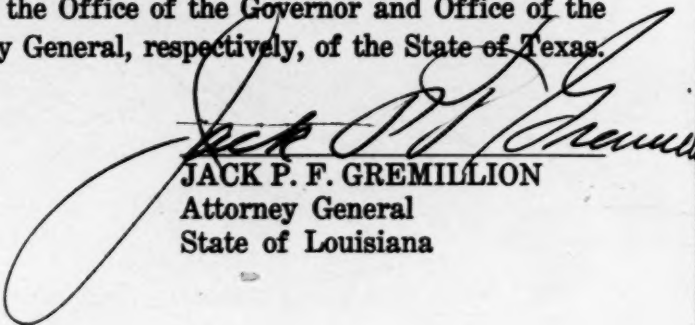
EDWARD M. CARMOUCHE,
Assistant Attorney General.

OLIVER P. STOCKWELL,
Special Assistant Attorney General.

JACOB H. MORRISON,
Special Assistant Attorney General.

CERTIFICATE OF SERVICE

I, Jack P. F. Gremillion, Attorney General of Louisiana, and a member of the bar of the Supreme Court of the United States, hereby certify that on the 2 day of February, 1970, I served copies of the foregoing opposition by the State of Louisiana to the motion filed by the State of Texas, and memorandum in support thereof, by transmitting conforming copies of the same, by first class mail, postage prepaid, to the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas.



JACK P. F. GREMILLION
Attorney General
State of Louisiana



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No. 36 ORIGINAL

FILED

APR 20 1970

JOHN F. DAVIS, CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**MOTIONS AND ANSWER OF THE STATE OF
LOUISIANA TO COMPLAINT BY THE
STATE OF TEXAS**

**JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.**

**JOHN L. MADDEN,
Assistant Attorney General.**

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THE STATE OF TEXAS,

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Defendant.

**MOTIONS AND ANSWER OF THE STATE OF
LOUISIANA TO COMPLAINT BY THE
STATE OF TEXAS**

The State of Louisiana, herein appearing through its Attorney General, and in response to the complaint filed by the State of Texas, avers:

FIRST DEFENSE

The complaint filed by the State of Texas fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The State of Texas failed to make the United States a party plaintiff to these proceedings, the proper party to bring these proceedings on behalf of the State of Texas. When Congress of the United States, by joint resolution passed on March 1, 1845, consented that the territory belonging to the Republic of Texas within its boundary might be created into a State to be

admitted into the Union, one of the conditions of such consent was that the new State to be formed was "subject to the adjustment by the United States of all questions of boundary that might arise with other governments." (5 Stat. 797.) The conditions were accepted by Texas. (1 Sayles Early Laws of Texas, Art. 1531.) By joint resolution of Congress, approved December 18, 1845, Texas was admitted as one of the States of the Union (9 Stat. 108.) In admitting Texas as a State into the Union, Congress specifically reserved to the United States the exclusive power to appear on behalf of the State of Texas to settle all boundary disputes that may arise with other governments, which includes the State of Louisiana. Therefore, the United States is an indispensable party plaintiff to this litigation.

THIRD DEFENSE

The State of Louisiana pleads accord and satisfaction in that the boundary between the State of Texas and the State of Louisiana, set forth in the complaint, was settled in the Treaty between the United States (as a sovereign nation appearing on behalf of the State of Louisiana) and Spain in 1819, which boundary was confirmed on January 12, 1828 in a Treaty between the United States and the United Mexican States and on April 25, 1838 in a Treaty between the Republic of Texas and the United States. The boundary was thereafter surveyed and staked by a Joint Commission appointed by the Republic of Texas and the United States from the Gulf of Mexico along

the west bank of Sabine Pass, Sabine Lake and Sabine River to the 32d degree of north latitude, and then north to the 33rd degree of north latitude (Senate Document 199, 27th Congress, 2d Session, 1842). The boundary having thus been fixed is not in dispute and, therefore, the State of Texas is not empowered to change such boundary.

FOURTH DEFENSE

In answer to each paragraph of the complaint filed by the State of Texas, the State of Louisiana avers:

1.

Article I requires no answer.

2

In answer to Article II the State of Louisiana admits that the United States Congress approved an Act on July 5, 1848 (9 Stat. 245), which Act is the best evidence of its contents and provisions, but denies that the Statute had the effect of transferring title from the State of Louisiana to the State of Texas of the western half of the river bed and subsoil of Sabine River (including Sabine Pass and Sabine Lake) from the Gulf of Mexico to the 32nd degree of north latitude.

Further answering said Article the State of Louisiana admits that the Legislature of the State of Texas passed an Act approved November 24, 1849 (3 Gammels Laws of Texas 442), which Act is the best evidence of its contents and provisions, but the State of Louisiana denies that the Act had the effect of transferring from the State of Louisiana to the State of

4

Texas title to the west half of the river bed and subsoil of Sabine River (including Sabine Pass and Sabine Lake) from the Gulf of Mexico to the 32nd degree of north latitude.

3.

Article III is denied.

4.

In answer to Article IV the State of Louisiana admits that since the western boundary of the State of Louisiana was established by the Treaty of 1819 and surveyed under a Commission appointed by the Republic of Texas and the United States by virtue of the Treaty dated April 25, 1838, the western boundary of the State of Louisiana was and has been fixed from the Gulf of Mexico along the west bank of Sabine Pass, Sabine Lake and Sabine River to the 32nd degree of north latitude and thence north to the 33rd degree of north latitude and that the Sabine Pass from the Gulf of Mexico, Sabine Lake and Sabine River are one continuous body of navigable water, which the State of Louisiana will collectively refer to as the "Sabine River", for clarity and convenience, in answer to this complaint.

5.

Article V is denied.

6.

Article VI is denied.

Further answering said paragraph the State of

Louisiana avers that by Act of Congress of March 25, 1804 (2 Stat. 283) there was created out of the Louisiana Purchase the Territory of Orleans "which lies South of the Mississippi Territory and of an East and West line to commence on the Mississippi River at the 33rd degree of North latitude, and to extend West to the western boundary of the said cession". The western boundary was not given since it had not at that time been established. On April 10, 1812, the Territory of Orleans became the State of Louisiana. A few days later a portion of West Florida was added to the State of Louisiana. At the time the State of Louisiana was admitted into the Union the western boundary of the Territory of Orleans, from which it was formed, had not been established. There was in existence an agreement in 1806 entered into between General Wilkinson, representing the United States, and Lieutenant Colonel Herrera, representing Spain, establishing a neutral zone between the Sabine River to the 32nd degree of north latitude, thence a straight line running from the Rio Roxo to the intersection of the Mermentau River a few miles from its mouth, thence along the Mermentau River to the Gulf of Mexico as the eastern boundary, and the Gulf of Mexico as the southern boundary. The western boundary of the State of Louisiana, as contained in its Act of Admission, was still to be established between the United States, acting for the State of Louisiana under its constitutional authority (see United States Constitution, Article I, Section 10, Clause 1, Article II, Section 2) and Spain. The boundary was finally settled by the Treaty of 1819

(Annals of Congress, Appnd., 6th Congress, 2d Session, pp. 2120-23). The boundary was established as beginning on the Gulf of Mexico at the mouth of Sabine River in the sea and continuing north along the west bank of that river to the 32d degree of north latitude; thence by a line due north to the 33rd degree of north latitude, etc., including "all the islands in the Sabine . . . but the use of the waters and navigation of the Sabine to the sea and of the said Rivers Rio Roxo and Arkansas throughout the extent of the said boundary on their respective banks shall be common to the respective inhabitants of both nations".

7.

Article VII is denied.

Further answering each subparagraph of said Article the State of Louisiana avers:

A. In answer to this subparagraph the State of Louisiana refers the Court to its answer to Article VI of the complaint.

B. In answer to subparagraph B the State of Louisiana admits the existence of Senate Documents, 30th Congress, 1st Session, 1848, Miscellaneous No. 135, which document is the best evidence of its contents and provisions, but specifically denies that this document evidenced any intent on the part of the State of Louisiana to give up any of its title to the river bed and subsoil of the western half of the Sabine River. The waters and navigation of the Sabine River were and are common to both States and this resolution, if it

had any effect, only related to the water and navigation of the Sabine River.

C. Subparagraph C is denied.

Further answering, the State of Louisiana avers that it has never consented or acquiesced in any purported claim made by the State of Texas of jurisdiction, sovereignty, possession and ownership over the river bed and subsoil of the west half of the Sabine River.

D. The allegations of subparagraph D are denied for lack of sufficient information on which to form a belief, except that the State of Louisiana avers that it has continued to claim jurisdiction over, and ownership of, the river bed and subsoil of the west half of the Sabine River, including all islands, and that the case of *State v. Burton*, 105 La. 516, 29 So. 970 (1901) refers to the enforcement of criminal law on the waters of Sabine River and does not pertain to the State of Louisiana's ownership of the river bed and subsoil of the Sabine River to its western bank, including all islands.

E. In answer to subparagraph E the State of Louisiana avers that it has recognized the State of Texas' right of use and navigation of the waters of Sabine River along with the State of Louisiana as established in the Treaty of 1819 and by virtue of which the State of Louisiana has co-operated with the State of Texas in building bridges and providing ferries across the Sabine, but has never recognized or conceded any ownership in the State of Texas to the river

bed and subsoil of the Sabine River to its western bank, including all islands, and the remaining allegations of said subparagraph are denied.

F. Subparagraph F is denied for lack of sufficient information on which to form a belief.

Further answering, the State of Louisiana avers that it has recognized the right of the State of Texas to the use and navigation of the waters of the Sabine River along with the State of Louisiana as provided in the Treaty of 1819, but has never acquiesced in any purported claim of the State of Texas to the ownership of any portion of the river bed and subsoil of the Sabine River including all islands.

8.

The allegations of Article VIII are denied except that the State of Louisiana admits that it has and is asserting title to the river bed and subsoil of Sabine River to its western bank, including title to all islands, from the Gulf of Mexico to the 32d degree of north latitude and thence north to the 33rd degree of north latitude, including the submerged lands in the Gulf of Mexico acquired under the Submerged Lands Act. The State of Louisiana admits that it is objecting to the State of Texas leasing any of its territory set forth above and has threatened lawsuits against the State of Texas and its lessee.

The State of Louisiana avers that it has asserted ownership to the above and that it has attempted to resolve this dispute with the State of Texas without any success.

In answer to Article IX the State of Louisiana admits this Honorable Court has original jurisdiction in disputes between States.

Further answering, the State of Louisiana avers that the boundary between the State of Louisiana and the State of Texas was settled in the Treaty between the United States as a sovereign nation, appearing on the part of the State of Louisiana, and Spain in 1819, which boundary was later confirmed on January 12, 1828, and on April 25, 1838 and actually surveyed and staked commencing in the Gulf of Mexico on the west side of Sabine River, thence along the west side of said river to the 32d degree of north latitude and thence north to the 33rd degree of north latitude (Senate Document 199, 27th Congress, 2d Session, 1842, pp. 297 et seq. See also: 5 Stat. 312), which boundary the State of Louisiana asserts in these proceedings is the actual boundary between the State of Texas and the State of Louisiana, and should be recognized and confirmed by this Honorable Court as such.

FIFTH DEFENSE

Motion to Refer to a Master for Initial Determination

While the State of Louisiana maintains the boundary between it and the State of Texas has been established and surveyed, nevertheless in view of the claims made by the State of Texas and the response of the State of Louisiana, it is respectfully suggested that this is an appropriate case to be referred to a Master

for initial determination for a variety of reasons, namely:

(a) This litigation is of vast importance to the State of Louisiana and to the State of Texas and a resolution of the issues raised by both parties will require a most searching examination into all of the historical facts surrounding the Louisiana Purchase, the evolution of the States of Louisiana and Texas, and of the various treaties fixing and establishing the western boundary of the State of Louisiana.

(b) While the State of Louisiana disputes many of the facts alleged in the complaint filed by the State of Texas and the inferences to be drawn therefrom, it must be conceded that in a determination of this controversy a thorough investigation into, and a development of, all the facts relating to the use of the waters and the navigation of Sabine River from the date of the Louisiana Purchase to the present time should be established.

(c) The complaint of the State of Texas in itself justifies a suggestion to this Honorable Court that a Special Master should be appointed to receive and consider the evidence purported to be offered by the State of Texas in support of their allegation and by the State of Louisiana in refutation thereof.

(d) It will be necessary to consider the debates, correspondence, legislative enactments and other historical data on the events leading up to the creation of the State of Louisiana and the settlement of its western boundary by the Treaties of 1819 (Annals of

Congress, Appnd., 16th Congress, 2d Session, pp. 2120, 2121, 2123), 1828 (8 Stat. 372), and 1838 and the actual surveying and staking of the western boundary of the State of Louisiana (Senate Document 199, 27th Congress, 2d Session, 1842, pp. 297 et seq. See also: 5 Stat. 312).

(e) The State of Louisiana asserts in its complaint that the boundary between the State of Louisiana and State of Texas has already been established and that Louisiana has taken physical possession of that landed part of the boundary from the 32d degree of north latitude north to the 33rd degree of north latitude and has asserted ownership over the river bed and subsoil of the Sabine River to its western bank, including title to all islands from the Gulf of Mexico to the 32d degree of north latitude.

(f) If this Honorable Court should determine that the western boundary of the State of Louisiana was not fixed from the Gulf of Mexico along the west bank of Sabine Pass, Sabine Lake and Sabine River, to the 32 degree north latitude then evidence will be required to determine the exact location of the boundary of the State of Louisiana in the Sabine Pass, Sabine Lake and Sabine River, including the location of all islands which belong to the State of Louisiana from the Gulf to the 32d degree of north latitude.

(g) This Court has not hesitated to appoint a Special Master where there is a strong indication that to properly resolve the dispute involved in the original action it is necessary to consider volumes of evidence and to make findings of fact so that this Honorable

Court would be able to ultimately resolve the dispute. The Court said, in the case of *United States v. Texas*, 339 U. S. 707, 715 (1950), as follows:

"The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts. *United States v. State of Texas*, 162 U. S. 1, 16 S. Ct. 725, 40 L. Ed. 867; *State of Kansas v. State of Colorado*, 185 U. S. 125, 144, 145, 147, 22 S. Ct. 552, 558, 559, 560, 46 L. Ed. 838; *State of Oklahoma v. State of Texas*, 253 U. S. 465, 471, 40 S. Ct. 580, 582, 64 L. Ed. 1015. If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

The Supreme Court, in the now pending case of *United States v. Louisiana*, 394 U. S. 11, 89 S. Ct. 773, referred to a Special Master various issues of fact to be resolved.

In justifying our request for a Special Master we call the Court's attention to "The Original Jurisdiction of the United States Supreme Court", 11 Stan. L. Rev. 665, 701-19 (1959); *United States v. Utah*, 283 U. S. 64 (1931); *United States v. Wyoming*, 331 U. S. 440 (1947); *New Jersey v. Delaware*, 291 U. S. 361 (1934) and *Colorado v. Kansas*, 320 U. S. 383 (1943).

The reference of the case to a Special Master will not result in any delay, but will establish a forum for an orderly presentation of the evidence to be offered

by the parties to this litigation and a finding on this evidence by a Special Master to be submitted to this Honorable Court for a final decision.

The State of Louisiana respectfully submits, for the above reasons, that this case be referred to a Special Master and that the Master be instructed particularly to prepare detailed findings upon (a) the contention of the State of Louisiana that the United States in the Treaties of 1819, 1828 and 1838, acted on behalf of the State of Louisiana in settling the western boundary of the State of Louisiana; (b) the contention by the State of Louisiana that the boundary between the State of Louisiana and State of Texas has already been settled and surveyed; (c) the contention of the State of Louisiana that the Act of July 5, 1848 permitting the State of Texas to extend its jurisdiction to the center of the Sabine River had no effect of transferring any of the title to the river bed and subsoil of the Sabine River from the Gulf of Mexico to the 32nd degree of north latitude, which was owned by the State of Louisiana; and (d) the contention of the State of Louisiana that it accepted the boundary as established by the Treaties and surveyed by the Joint Commission by adjusting its boundary to conform to the survey and by taking possession up to the survey along the landed portion of the boundary from the west bank of the Sabine River at the 32d degree of north latitude north to the 33rd degree of north latitude and of the river bed and subsoil of the Sabine River to its western bank, including all islands from the Gulf of Mexico to the 32d degree of north latitude.

In making this motion the State of Louisiana reserves the right to provide the evidence and historical material referred to above to this Honorable Court in the most efficient manner prescribed by this Court, if the motion is denied.

WHEREFORE, the State of Louisiana prays that this matter be referred to a Special Master for initial determination on the various motions and merits of this controversy and that the Master be instructed to prepare detailed findings upon the contentions of the State of Louisiana, and on such other matters as this Honorable Court may direct.

PRAYS FURTHER that this Court decree that the boundary between the State of Louisiana and the State of Texas was established by the Treaties of 1819, 1828 and 1838, and fixed by the survey of the Joint Commission; that such boundary still exists, and that the claims set forth by the State of Texas be rejected.

Respectfully submitted,

JACK P. F. GREMILLION,
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State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

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Special Assistant Attorney General.

CERTIFICATE OF SERVICE

I, Jack P. F. Gremillion, Attorney General of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1970, I served copies of the foregoing motions and answer by the State of Louisiana to the complaint filed by the State of Texas, by transmitting conformed copies of the same, by first class mail, postage prepaid, to the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

FILE COPY

FILED

MAY 27 1970

No. 36, ORIGINAL

JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff

v.

THE STATE OF LOUISIANA,

Defendant

**MOTION FOR JUDGMENT AND MEMORANDUM
WITH RESPECT TO THE MOTION AND REPLY
TO DEFENDANT'S ANSWER AND MOTION**

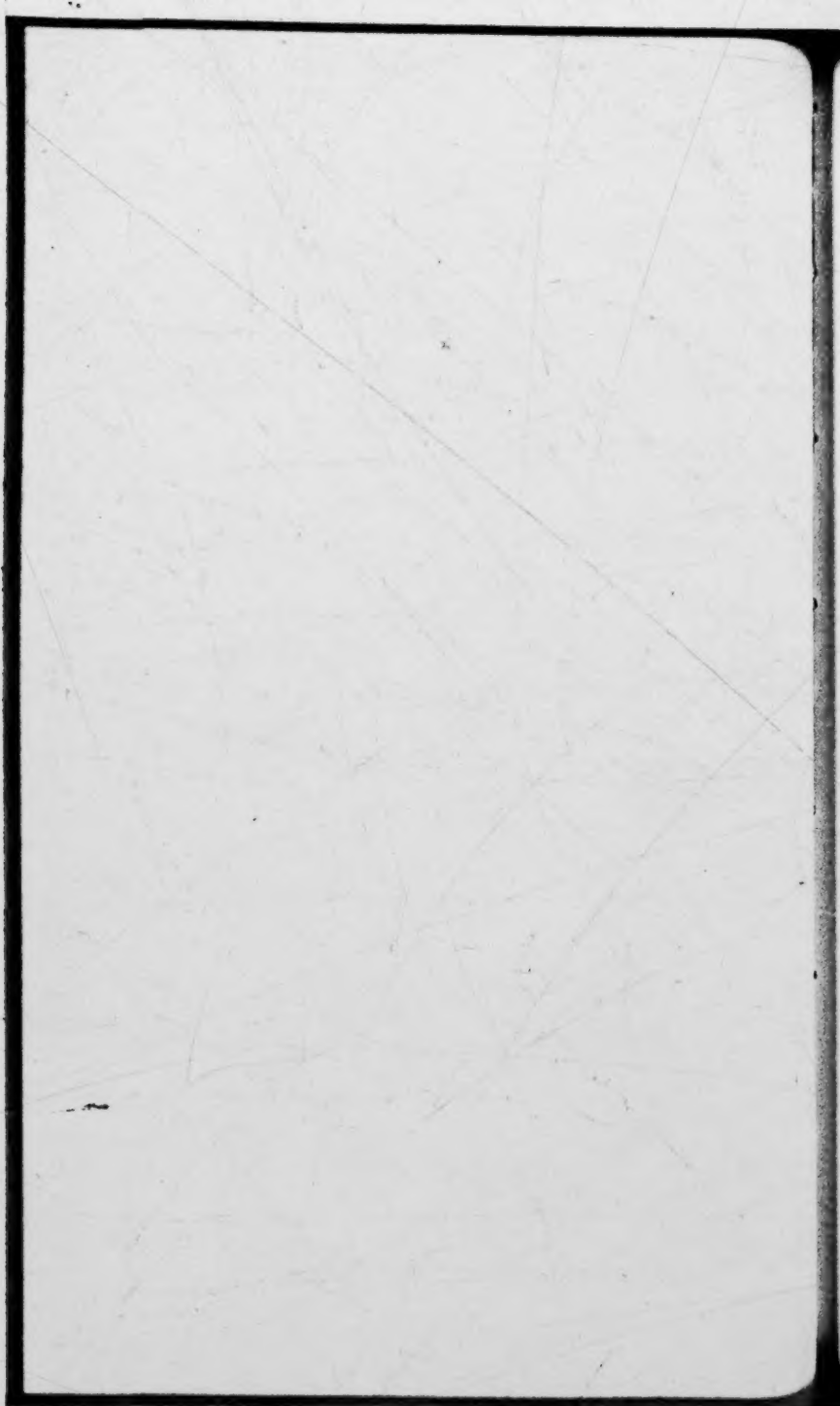
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**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1969

No. 36, Original

THE STATE OF TEXAS,

v.

Plaintiff

THE STATE OF LOUISIANA,

Defendant

MOTION FOR JUDGMENT

The State of Texas moves the Court for judgment as prayed in the Complaint on the ground that there is no genuine issue as to any material fact and the State of Texas is entitled to judgment as a matter of law.

CRAWFORD C. MARTIN
Attorney General of Texas

May 1970

MEMORANDUM WITH RESPECT TO MOTION FOR JUDGMENT

Pursuant to the Court's permission for the State of Texas to file its Complaint, the State of Louisiana has filed its Answer to the Complaint and a motion for referral of the case to a Special Master. The answer raises no genuine issue as to any material fact.

The controlling issue, as framed by the pleadings, is whether the western half of the Sabine River¹ from its mouth to the 32nd degree of north latitude was part of the territory of the United States of America and subject to its jurisdiction and ownership on July 5, 1848, when the Congress (9 Stat. 245) gave consent for the State of Texas to extend its eastern boundary so as to include such area. Texas alleges that the United States possessed such exclusive territorial jurisdiction and ownership on July 5, 1848, and Louisiana denies it.

A determination of the issue depends upon the proper legal interpretation of portions of two treaties, four Acts of Congress, the 1812 Constitution of Louisiana, and one Act of the Texas Legislature, which are cited by the parties in support of their opposing contentions. All are subject to judicial notice. There is no uncertainty or dispute about the wording or meaning of their terms, none of which is subject to being varied by extrinsic evidence. These treaties and laws are as follows:

1. The Louisiana Purchase Treaty of 1803 (8 Stat. 200), under which Louisiana admits that the half of the Sabine River in controversy

¹Defendant admits that Sabine Pass, Sabine Lake, and Sabine River form one continuous body of navigable water. Defendant's Answer, page 4, par. 4. For convenience they are collectively referred to as "Sabine River."

was part of the territory acquired by the United States from France.'

2. The Act of Congress of March 26, 1804 (2 Stat. 283) creating the Territory of Orleans from that portion of the Louisiana Purchase lying west of the Mississippi River and south of the 33rd degree of north latitude. Louisiana admits that the western boundary of this Territory, from which the State of Louisiana was formed, "had not been established."
3. The Act of Congress of February 20, 1811 (2 Stat. 641) providing "That the inhabitants of all *that part* of the territory or country ceded under the name of Louisiana . . . *contained within the following limits*, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn *along the middle of the said river, including all islands to the thirty-second degree of latitude*; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi . . . be, and they are hereby authorized to form for themselves a constitution and state government." . . . 'Louisiana does not deny the passage or the terms of this enabling act.
4. The Constitution of the State of Louisiana adopted on January 22, 1812, in which the western boundary of the new State was fixed in the middle of the Sabine River in the same wording authorized by Congress. Louisiana

'Defendant's Answer, p. 5. Louisiana does not deny Plaintiff's allegations that "under the Louisiana Purchase of 1803 the United States acquired from France a vast area between the Mississippi River and the Rocky Mountains from which all or part of thirteen States were carved. Until 1819, the United States claimed that the western boundary of the Purchase was the Rio Grande River and that it thus included the present State of Texas." Complaint and Brief, p. 9.

'Defendant's Answer, p. 5.

'Emphasis supplied unless otherwise noted.

does not deny the wording of this provision of its Constitution, and neither does it deny the specific allegation of Plaintiff (Complaint, p. 5, par. A) that "In 1812, Louisiana adopted its State Constitution as aforesaid, with its western boundary in the middle of the Sabine River. It was with this boundary that Louisiana sought and was granted admission to the Union, and this boundary act has not been changed by Louisiana."

5. The Act of Congress of April 8, 1812 (2 Stat. 701) admitting the State of Louisiana into the Union, with the preamble reciting that "the representatives of the people of all *that part of the territory . . . contained within the following limits*" . . . (here repeating the same boundaries quoted in 3 above), "did . . . form for themselves a constitution and state government." . . . Louisiana does not deny the terms of the Act of Admission, but alleges that it and 3 and 4 above did not fix the western boundary of the State. Defendant's Answer, pp. 4-6.
6. The Treaty, 1819, of Amity, Settlement, and Limits between the United States and Spain (8 Stat. 252), whereby the United States relinquished to Spain its claim to all of that portion of Texas lying west of the west bank of the Sabine and a line drawn north from the intersection of the Sabine and the 32nd degree of north latitude to the Red River and thence with the Red River and other boundaries west to the Pacific Ocean, in exchange for Spain's relinquishment to the United States of all claims to territory east and north of the above line, including the disputed area of West Florida. Louisiana alleges (Defendant's Answer, pp. 5-6) that the United States was "acting for the State of Louisiana" in making this treaty and boundary agreement with Spain, and that this treaty had the effect of automatically extend-

ing the western boundary of the State of Louisiana to the west bank of the Sabine.*

Texas denies that the United States was "appearing on the part of the State of Louisiana" in making the treaty or in its subsequent marking of this west bank boundary with the successors of Spain. Texas alleges that this treaty, as clearly recited on its face, was made by the United States on its own behalf respecting the limits of its "bordering territories in North America"; that the State of Louisiana is not referred to in the treaty or in the proceedings leading up to its consummation; that from 1803 until November 24, 1849, the United States had exclusive jurisdiction and ownership over the western half of the Sabine the same as over all other territory ceded in the Treaty of 1819 which lay outside the boundaries of the State of Louisiana and other States.

7. The Act of the Congress of July 5, 1848 (9 Stat. 245) authorizing the State of Texas to "extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude." Louisiana admits this enactment but "denies that the Statute had the effect of transferring title from the State of Louisiana to the State of Texas of the western half of the riverbed and subsoil of Sabine River. . . ." Defendant's Answer, p. 3.
 8. Act of the Texas Legislature, November 24, 1849, extending its eastern boundary to the middle of the Sabine as authorized by Congress.
- 3 Gammels Laws of Texas 442. Louisiana

*Louisiana also alleges that this west bank boundary was subsequently confirmed when the United States entered agreements with Mexico in 1828 and the Republic of Texas in 1838 for the marking of same on the ground. Defendant's Answer, p. 9.

makes the same admission and denial of effect here as with respect to 7 above. Defendant's Answer, pp. 3-4.

Obviously, the Court may take judicial notice of the above listed acts and treaties which the parties agree to be relevant and controlling. Their proper interpretation involves only questions of law. Neither party alleges that any of their terms or meanings are uncertain. The only dispute arises from the opposing legal interpretations of their effect. For these reasons the State of Texas submits that the case should be decided on the basis of the pleadings, briefs and arguments, and that there is no reason to refer the case to a Special Master.

It is respectfully suggested that Plaintiff's Motion for Judgment be set for hearing on a date which will permit Plaintiff 60 days within which to file its brief in support of the Motion, the Defendant 60 days thereafter for its brief in opposition, and the Plaintiff 30 days for reply.

Respectfully submitted,

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**PLAINTIFF'S REPLY TO DEFENDANT'S
ANSWER AND OPPOSING DEFENDANT'S
MOTION FOR APPOINTMENT OF A
SPECIAL MASTER**

Plaintiff's foregoing Memorandum With Respect to its Motion for Judgment constitutes a partial reply to Defendant's Answer and motion for referral to a Special Master, but this Reply will formally respond to Defendant's enumerated separate defenses in the same order as they are set forth in Defendant's Answer.

REPLY TO FIRST DEFENSE

To Defendant's allegation that the Complaint "fails to state a claim on which relief can be granted," Plaintiff simply says that it is obvious from the pleadings (See Defendant's Answer, page 8, paragraph 8) that a real controversy does exist and that this Court has jurisdiction under Article III, Section 2, Clause 2, of the Constitution of the United States. The Court has so decided in granting leave to file the Complaint.

REPLY TO SECOND DEFENSE

The provision in the Texas Annexation Agreement (5 Stat. 797) that it was "subject to the adjustment by the United States of all questions of boundary that might arise with other governments" was applicable to disputes with foreign nations, particularly Mexico, and it does not require that the United States be a party to or appear on behalf of Texas in this dispute with another State of the Union.*

*See the Court's opinion in *United States v. Louisiana, et al.*, 363 U.S. 1, 44-62, for a complete discussion of the meaning of this provision and the manner in which it was carried to conclusion. There the Court said at page 44: "Rather, the precise fixation of the new State's boundaries was left to future negotiations with Mexico. The circumstances surrounding the Resolution's passage make it clear that this was the understanding of Congress."

Further, the provision applied only to that territory which was in 1845 "properly included within and right-fully belonging to the Republic of Texas." The western half of the Sabine River was never within the boundaries of the Republic of Texas. It became a part of the State of Texas only by Act of Congress on July 5, 1848 (9 Stat. 245) authorizing the State to "extend her eastern boundary" to include the western half of the Sabine River and by Act of the Texas Legislature so extending the boundary on November 24, 1849.

If in fact the United States had any responsibility under the Texas Annexation Agreement for adjusting future domestic boundaries, it was no greater than the responsibility it has under the Constitution with respect to approval of changes in any State's boundary, and it was fully discharged with respect to the Sabine boundary by the Act of July 5, 1848. In no event is the United States a necessary party to this action, since it has already acted and this suit seeks to uphold that action and the jurisdiction and title the United States granted to Texas as against the adverse claims of Louisiana.

REPLY TO THIRD DEFENSE

Plaintiff denies Defendant's plea of "accord and satisfaction" based upon a contention that the State of Louisiana's western boundary was automatically extended to the west bank of the Sabine River when the United States relinquished its claim to all territories west of the west bank of that stream in the Treaty with Spain in 1819, (8 Stat. 252) Plaintiff specifically denies that in this instance the United States was "appearing in behalf of the State of Louisiana" in making the Treaty of 1819 or in its subsequent agreements with Mexico and the Republic of

Texas for marking the west bank boundary. The Treaty of 1819 recites that it was made by the United States on its own behalf, as the national sovereign, respecting the limits of its "bordering territories in North America." The State of Louisiana is not mentioned or referred to in the Treaty or the proceedings leading up to its consummation or in any subsequent confirmations thereof with Mexico and the Republic of Texas as successors to the government of Spain.

The United States exercised exclusive jurisdiction and ownership over the west half of the Sabine River from the time of the Louisiana Purchase in 1803 until it authorized Texas to extend its eastern boundary to the middle of the stream by Act of Congress on July 5, 1848, in the same manner that the United States exercised jurisdiction over all of the other territory relinquished by Spain which lay outside the boundaries of the State of Louisiana and other States.

The Congress permitted Louisiana to include within its State boundaries only the eastern half of the Sabine, including all islands within the stream (2 Stat. 641; 2 Stat. 701), and the State of Louisiana by its Constitution of 1812 adopted such middle of the stream boundary. Neither the United States nor Louisiana has ever enacted any law extending such western boundary of the State of Louisiana. On the contrary, the State of Louisiana acquiesced in the possession, title and jurisdiction of the United States over the west half of the Sabine from 1812 to 1849, and of the State of Texas from November 24, 1849 until this controversy arose.'

'The Louisiana Legislature, by Resolution adopted April 28, 1848, so recognized the status of the area by reciting that "the constitution and laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine River from the middle of said stream to the western bank thereof. . . ." Senate Documents, 30th Cong. 1st Sess. 1848, Misc. No. 135.

REPLY TO FOURTH DEFENSE

Defendant's **FOURTH DEFENSE** merely answers the Complaint and makes no affirmative allegations other than those contained in its **THIRD DEFENSE** (replied to above), except on page 5 it alleges that "On April 10, 1812, the Territory of Orleans became the State of Louisiana," and that "the western boundary of the State of Louisiana, as contained in its Act of Admission, was still to be established between the United States, acting for the State of Louisiana . . . and Spain." These allegations are denied. Plaintiff specifically denies that all of the Territory of Orleans was included within the State of Louisiana. Both the Enabling Act (2 Stat. 641) and the Admission Act (2 Stat. 701) specifically limit the State of Louisiana to "*that part of the territory . . . contained within the following limits,*" which fix the west boundary in the middle of the Sabine, the same as was done in the Louisiana State Constitution of 1812. By the Act of Admission, Congress further confirmed that part of the Territory of Orleans was not included within the State when it provided in Section 3 "That the said State, *together with the residue of that portion of the country which was comprehended within the territory of Orleans . . . shall be one district . . .*" for jurisdiction of a federal court.

REPLY TO FIFTH DEFENSE

Defendant's **FIFTH DEFENSE** is comprised solely of a motion for referral of this case to a Special Master for initial determination. Plaintiff refers the Court to its foregoing Memorandum With Respect to its Motion for Judgment for a detailed reply to Louisiana's request for a Special Master. In that Memorandum, Plaintiff has listed and commented on eight

treaties and legislative acts, the proper legal interpretation of which is controlling of the issues raised by the pleadings. All of the proposed findings enumerated by Louisiana for determination by a Master (Answer, p. 13) relate to one or more of these treaties and acts. All are subject to judicial notice, and the meaning of none are alleged to be uncertain or doubtful. Therefore, there is no need at this time for the taking of any evidence or for referral of the case to a Master.

It is true that Plaintiff has alleged long possession and exercise of jurisdiction over the controverted area, first by the United States from 1803 to 1849 and thereafter by the State of Texas, and that Louisiana has acquiesced therein. However, in view of the admissions in Louisiana's Answer and the narrowing of the issues to the legal effect of the eight controlling treaties and legislative acts, it is doubtful that there will be any need to reach the issue of prescription. Even if it should be necessary to develop such issue, the proof can be made by both parties through statutes enacted, official acts, maps and documents which are subject to judicial notice and suitable for attachment to the briefs.

Louisiana further suggests that if the Court should determine that the western boundary of the State is in the middle of the Sabine, then evidence will be required to determine the exact location of the boundary in the River, Pass and Lake, including the location of all islands which belong to Louisiana. It would seem premature to appoint a Master for such purpose at this stage of the case. The question now is whether the boundary is in the middle of the Sabine or along the west bank. If it is determined to be in the middle, and if a subsequent controversy arises which cannot be re-

solved by the States as to the exact location of the middle of the stream at any given point, that would be time enough for the Court to appoint a Master to hear evidence and make findings. In many original actions involving boundaries the Court has retained jurisdiction for such future specific determinations. In this instance, it is doubtful that such controversies will arise, because over a long period of years mapping experts of the United States government have platted and published maps showing the mid-stream Sabine boundary between Texas and Louisiana. In this connection, Plaintiff refers the Court to the following examples:

1. Map published by the U. S. Geological Survey of the Department of Interior, 1932 edition, designated "Texas-Orange Quadrangle," which shows the east boundary of Orange County, Texas in the middle of the Sabine. This map recites assistance of the U. S. Army Air Corps and the U. S. Coast and Geodetic Survey.
2. Map No. NH 15-8 compiled in 1956 by the U. S. Army Map Service, Corps of Engineers, and published in 1956 by the U. S. Geological Survey, which shows the boundary between the two States in the middle of Sabine Lake and Sabine Pass.
3. Map of the Port Arthur Quadrangle compiled by the U. S. Army Corps of Engineers in 1957, showing the boundary between the two States in the Middle of Sabine River, Sabine Pass and Sabine Lake. Apparently Louisiana is fully familiar with this map, since the following legend is printed on its face: "For sale by the U. S. Geological Survey . . . and by the State of Louisiana, Department of Public Works, Baton Rouge 4, Louisiana."

For the reasons stated, Plaintiff opposes the Defendant's motion for referral to a Special Master at this time and urges that the Motion be denied and that the case should be heard on Plaintiff's Motion for Judgment hereto annexed.

Respectfully submitted,

CRAWFORD C. MARTIN
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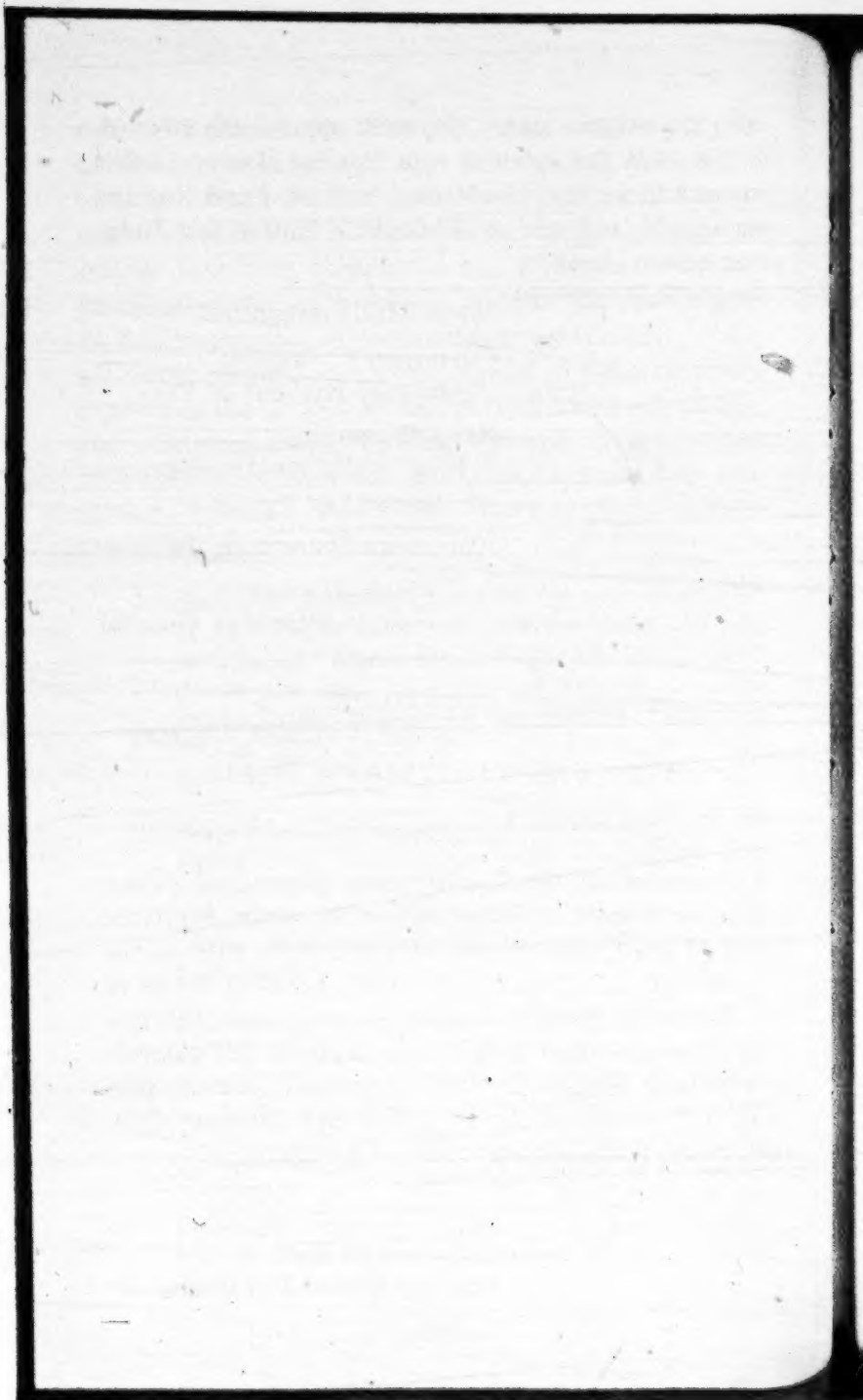
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Certificate

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the ---- day of -----, 1970, I served copies of the foregoing Motion for Judgment, Memorandum with Respect to the Motion and Reply to Defendant's Answer and Motion, by first class mail, postage prepaid, to the office of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas



NO. 36, ORIGINAL

Supreme Court, U.S.

FILED

~~NOV 18 1970~~

July 29, 1970

E. ROBERT SEAWER, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff

v.

THE STATE OF LOUISIANA,

Defendant

BEFORE THE HONORABLE
ROBERT VAN PELT, SPECIAL MASTER

BRIEF FOR THE STATE OF TEXAS
IN SUPPORT OF MOTION FOR JUDGMENT

CRAWFORD C. MARTIN
Attorney General of Texas

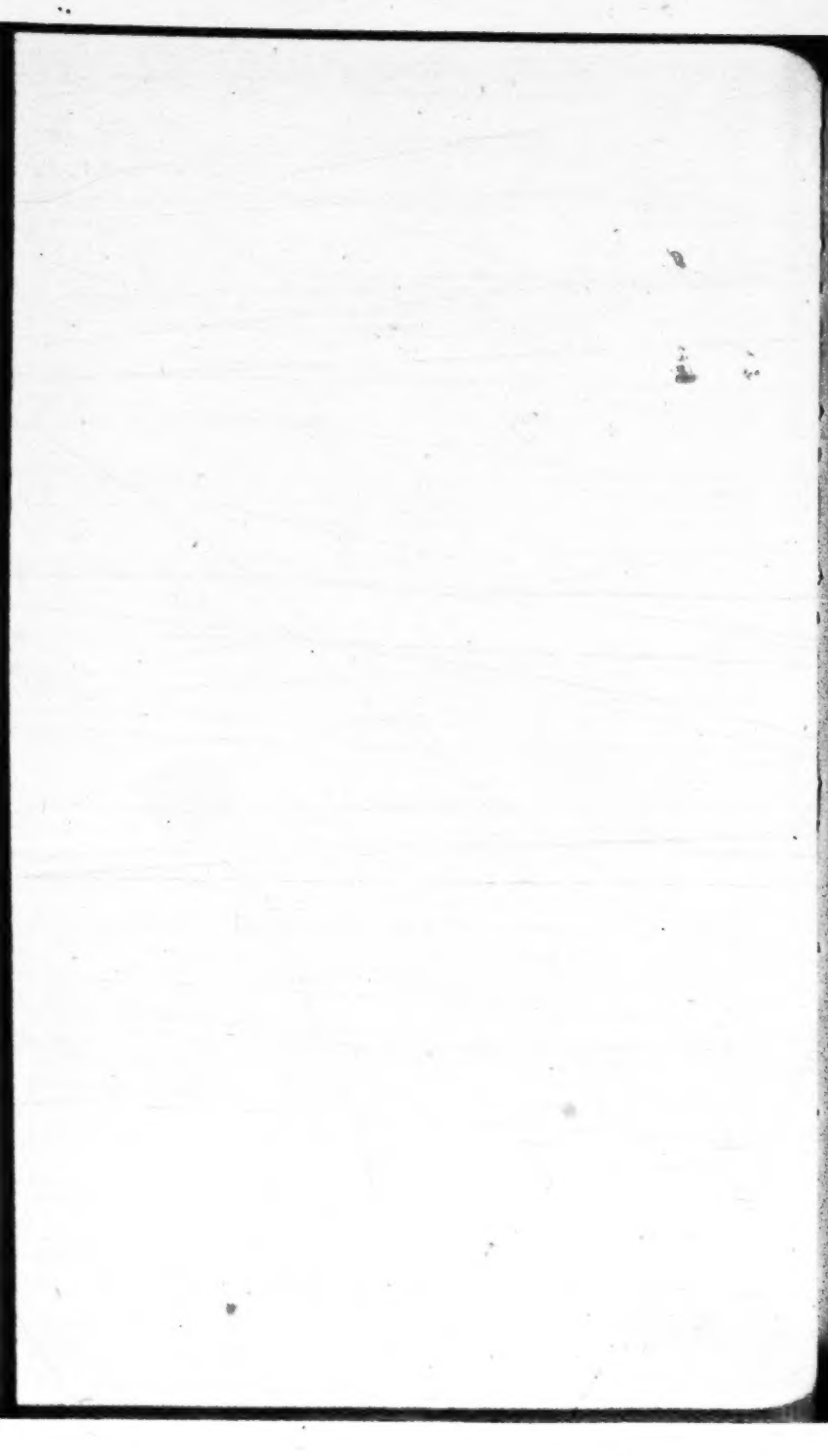
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969
NO. 36, ORIGINAL

THE STATE OF TEXAS,

Plaintiff

v.

THE STATE OF LOUISIANA,

Defendant

BEFORE THE HONORABLE
ROBERT VAN PELT, SPECIAL MASTER

**BRIEF FOR THE STATE OF TEXAS
IN SUPPORT OF MOTION FOR JUDGMENT**

This is a suit between the State of Texas and the State of Louisiana. As such, it is within the original jurisdiction of the Supreme Court under Article III, Section 2, Clause 2, of the Constitution of the United States.

TREATIES AND STATUTES INVOLVED

Relevant portions of the following controlling treaties and statutes are set out in the Appendix, *infra*, pp. 1-24;

1. The Louisiana Purchase Treaty of 1803, 8 Stat. 200; Appendix, p. 1.
2. Act of Congress, creating the Territory of Orleans, March 26, 1804, 2 Stat. 283; Appendix, p. 2.

3. Act of Congress enabling the inhabitants of part of the Territory of Orleans to form a constitution and state government, February 20, 1811, 2 Stat. 641; Appendix, p. 3.
4. Constitution of the State of Louisiana, January 22, 1812, in which the western boundary of the new State was fixed in the middle of the Sabine River; Appendix, p. 4.
5. Act of Congress, admitting the State of Louisiana into the Union, April 8, 1812, 2 Stat. 701; Appendix, p. 5.
6. The Treaty, 1819, of Amity, Settlement, and Limits between the United States and Spain, 8 Stat. 252; Appendix, p. 7.
7. Resolution of the Louisiana Legislature, March 16, 1848, recognizing exclusive Federal jurisdiction over the western half of the Sabine River, and requesting consent of the Congress for extension of the jurisdiction of the State of Louisiana over such area; Appendix, p. 20.
8. Resolution of the Texas Legislature, March 18, 1848, requesting consent of the Congress for extension of the jurisdiction of the State of Texas over the western half of Sabine Lake, Sabine Pass, and Sabine River; Appendix, p. 22.
9. Act of Congress authorizing the State of Texas to "extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the 32nd degree of north latitude," July 5, 1848, 9 Stat. 245; Appendix, p. 23.
10. Act of the Texas Legislature extending its eastern boundary to the middle of the Sabine as authorized by Congress, November 24, 1849, 3 Gammel's Laws of Texas 442; Appendix, p. 24.

QUESTIONS PRESENTED

1. Whether the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth to the 32nd degree of north latitude was part of the territory of the United States and subject to its exclusive jurisdiction and ownership on July 5, 1848, when the Congress gave consent for the State of Texas to extend its eastern boundary so as to include such area.
2. Whether, based upon the pleadings, treaties, laws and other matters subject to judicial notice by the Supreme Court and the Special Master, the State of Texas is entitled to the judgment prayed for as a matter of law.

STATEMENT

This suit was instituted by the State of Texas for the purpose of establishing its rights as against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River' from the mouth of the River on the Gulf of Mexico to the 32nd degree of north latitude, and for a decree confirming the boundary of the two States in the middle of said stream.

Texas filed its motion for leave to file the Complaint on December 12, 1969. Louisiana filed its opposition to the motion on February 3, 1970. The Supreme Court granted Texas' motion on February 27, 1970, and Louisiana filed its answer and motion for the appoint-

"The use of the term "Sabine River" in the Complaint, Louisiana's Answer, and this brief includes Sabine Pass and Sabine Lake. By their pleadings, the parties are in agreement that these streams form a continuous body of navigable water, and that for convenience they are referred to collectively as "Sabine River."

ment of a Special Master in April of 1970. On May 28, 1970, Texas filed a motion for judgment on the pleadings, and on June 1, 1970, the Supreme Court appointed the Honorable Robert Van Pelt, Senior Judge of the United States District Court of Nebraska to hear the case as Special Master and "to submit such reports as he may deem appropriate."

The Complaint alleges that by Act of the Congress approved July 5, 1848, consent was given to the State of Texas to extend its eastern boundary so as to include the western half of Sabine River; that pursuant to this Act of Congress, the Texas Legislature so extended the eastern boundary of the State by Act approved November 24, 1849; that prior to November 24, 1849, the United States held and exercised exclusive territorial jurisdiction over and ownership of the western half of the Sabine, having acquired the area from France under the Louisiana Purchase of 1803; that the western boundary of the State of Louisiana was fixed by Acts of Congress in 1811 and 1812 and the constitution of the State of Louisiana of 1812 in the middle of the Sabine River, and that such boundary has never been changed; that Texas has exercised continuous possession, jurisdiction and ownership over the western half of the Sabine since 1849, and that Louisiana recognized and acquiesced therein for more than 100 years.

Louisiana's Answer alleges that Texas fails to state a claim upon which relief can be granted; that the United States is a necessary party; and that the United States was not acting for itself but for the State of Louisiana when it obtained from Spain in the Treaty of 1819 confirmation of the title and jurisdiction of the United States over the western half of the Sabine.

Louisiana does not deny the existence or terms of any of the treaties or statutes above referred to, and neither does it allege that any of the terms are uncertain or ambiguous. It alleges that the Acts of Congress and Constitution of Louisiana did not effectively establish the western boundary of the State, and seeks to introduce extrinsic evidence of intent to show that the western half of the Sabine automatically became a part of the State of Louisiana by reason of the treaty of 1819 between the United States and Spain.

In Texas' pending motion for judgment and reply to Louisiana's Answer, it is alleged that the controlling issue in this case depends upon the interpretation of the aforesaid treaties and statutes; that all are subject to judicial notice; that their terms are definite and cannot be changed by extrinsic evidence; and that by their terms Texas is entitled to judgment as a matter of law.

SUMMARY OF ARGUMENT

I.

As a matter of law, the United States had exclusive jurisdiction over and ownership of the western half of the Sabine River on July 5, 1848, when Congress consented for the State of Texas to extend its western limits so as to include such area within its boundaries. Louisiana disputes this, claiming that despite the Acts of Congress and its own Constitution of 1812 fixing its western boundary in the middle of the Sabine, such boundary was automatically extended to the west bank of the Sabine by reason of the Treaty of 1819 between the United States and Spain. Therefore, Louisiana asserts that it, and not the United States, had ownership and jurisdiction for local purposes over this area in 1848.

The determination of this controlling issue requires only an interpretation of the treaties and laws under which both parties assert their rights. They are subject to judicial notice, and there is no allegation that any of their terms are uncertain or ambiguous. They show that Texas is entitled to judgment as a matter of law for the following reasons:

A. 1. The area in controversy was part of the territory acquired by the United States from France under the Louisiana Purchase Treaty in 1803 (8 Stat. 200), under which the United States claimed that territory extended westward to the Rio Grande, including all of Texas.

2. The area in controversy was never included within the boundaries of the State of Louisiana, because: (a) The Enabling Act of Congress, February 20, 1811, specifically limited the proposed State of Louisiana to a western boundary "along the middle of said (Sabine) river, including all islands to the thirty-second degree of latitude." (2 Stat. 641); (b) The Constitution of the State of Louisiana adopted on January 22, 1812, fixed its western boundary in the middle of the Sabine River, using the same language as the Enabling Act, and this constitutional provision has never been changed; and (c) The Act of Congress, April 8, 1812, admitting Louisiana as a State (2 Stat. 701) repeats the same Sabine boundary (middle of the said River) as in the Enabling Act of 1811 and in the Louisiana Constitution of 1812.

(d) The mid-stream boundary of the State of Louisiana as fixed by Congress and the Constitution of Louisiana in 1812 was in accordance with the policy and law of the United States relating to river boundaries between states and territories. All of Louisiana's

water boundaries are located mid-stream either by specific statute or operation of law. *Louisiana v. Mississippi*, 202 U.S. 1 (1906).

(e) Relinquishment by the United States of that portion of Texas lying west of the Sabine and retention of its title and jurisdiction over the western half of the Sabine River in the Treaty with Spain in 1819, did not result in an extension of the western boundary of Louisiana. In its negotiations with Spain in 1819, with Mexico in 1828, and with the Republic of Texas in 1838, with respect to that part of its territory lying outside of the boundaries of the State of Louisiana, the United States was acting for itself and not for the State of Louisiana. An extension of Louisiana's State boundary westward of the middle of the Sabine River would have required approval by the Congress of the United States, and such approval was never granted.

3. From 1819 until Congress authorized Texas to extend its eastern boundary to the middle of the Sabine in 1848, the United States had and exercised exclusive territorial jurisdiction and ownership over the western half of the Sabine River, and this was so recognized by a Resolution adopted by the Louisiana Legislature on March 16, 1848.

B. The eastern boundary of the State of Texas was properly and legally extended to include the western half of the Sabine River by the Act of Congress of July 5, 1848, and the Act of the Texas Legislature on November 24, 1849, and by reason thereof Texas is entitled to jurisdiction over and ownership of the area, subject only to the constitutional rights and functions of the United States. State ownership and jurisdiction extend to the waters of and lands beneath navigable streams within state boundaries. This was confirmed

by the Submerged Lands Act of 1953 (67 Stat. 29). Since November 24, 1849, the Congress and various Federal agencies have continuously recognized that the boundary between Texas and Louisiana is in the middle of the Sabine. Many river and harbor acts passed by Congress since 1849 and maps prepared by Federal agencies evidence this. Recognition of this nature was held to be highly persuasive in *Louisiana v. Mississippi*, *supra*. For more than 100 years prior to the inception of this controversy, the State of Texas exercised continuous possession, jurisdiction and dominion over the lands in controversy, during which period Louisiana continuously acquiesced therein.

C. In addition to its record title, Texas has acquired title to and jurisdiction over the area by prescription, because the State of Louisiana continuously acquiesced in the exercise of possession, jurisdiction and dominion over the area by the United States from 1812 to 1849 and by the State of Texas from 1849 until this controversy arose in recent years. Because the relevant treaties and laws so definitely establish the boundary between the two States, it should not be necessary to reach the issue of prescription. However, if for no other reason than to show the actions of the two States to be in full accord with the mid-stream boundary fixed as a matter of law, Texas lists a long number of continuous acts of possession, jurisdiction and dominion over the area in controversy since 1849. Likewise, continuous acquiescence by Louisiana for more than 100 years is shown in the Argument under points C. 3. (a) through (j).

The actions on the part of Texas include extension of the boundaries of its adjacent counties and cities to include the western half of the Sabine; enforcement by Texas' State, county and city law enforcement agencies

of their laws and ordinances over the western half of the Sabine; payment for construction of bridges across the western half of the Sabine under cooperative agreements with Louisiana and its Parishes; expenditure of large sums by the City of Port Arthur and Jefferson County, Texas, on roads, golf courses, bridges and other improvements on land reclaimed from the bed of the west half of Sabine Lake, without any protest from Louisiana; payment of half of navigation improvement costs on the Sabine in cooperation with Louisiana; sales of sand, shell, and marl and execution of 78 mineral leases on the western half of Sabine Lake without protest from Louisiana; and collection of taxes on private leases and improvements in the area.

In addition to its inaction and acquiescence, Louisiana has given affirmative recognition through a decision of its Supreme Court in 1901 that the boundary between the two States is in the middle of the Sabine. *State v. Burton*, 29 So. 970 (1901). Also, the Louisiana Attorney General and other attorneys for the State have recognized the mid-stream boundary in the Sabine in briefs before the Supreme Courts of the United States and Louisiana and before the U. S. General Land Office.

By reason of Louisiana's long acquiescence, the Act of its Legislature and the decision of the Supreme Court of Louisiana in *State v. Burton, supra*, recognizing and holding that the western boundary is in the middle of the Sabine, the State of Louisiana is estopped from denying such boundary.

II

The Answer of the State of Louisiana to the Complaint raises no genuine issue as to any material fact, and is insufficient in law.

A. Louisiana's first defense, that the Complaint "fails to state a claim upon which relief can be granted," has been decided by the Court in granting leave to file the Complaint. A real controversy is obvious from the pleadings.

B. Louisiana's second defense is that the United States is a necessary party on account of the provision in the Texas Annexation Agreement (5 Stat. 797) that it was "subject to the adjustment by the United States of all questions of boundary that might arise with other governments." This was applicable only to disputes with foreign nations, particularly Mexico, and it does not require that the United States be a party to or appear on behalf of Texas in this dispute with another State of the Union. Further, the provision applied only to that territory which was in 1845 "properly included within and rightfully belonging to the Republic of Texas." The western half of the Sabine River was never within the boundaries of the Republic of Texas. It became a part of the State of Texas only by Act of Congress on July 5, 1848 (9 Stat. 245), authorizing the State to "extend her eastern boundary" to include the western half of the Sabine River and by Act of the Texas Legislature so extending the boundary on November 24, 1849.

C., D. Louisiana's third and fourth defenses assert that despite its 1812 boundary fixed by Congress and the Louisiana Constitution in the middle of the Sabine, the boundary automatically moved to the west bank when the title of the United States was confirmed to the west bank by the Treaty with Spain in 1819. This is contrary to the interpretation made by the Louisiana Legislature by Resolution of March 16, 1848,

in which it recited that "the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine River from the middle of said stream to the western bank thereof." It is also contrary to the holding of the Supreme Court of Louisiana in *State v. Burton, supra*, that "the middle of the Sabine River is the boundary line between Texas and Louisiana. . . ." These defenses are further answered under I. A. 2 above.

E. Louisiana's fifth defense urges that evidence be heard on the history "surrounding the Louisiana Purchase, the evolution of the two States, and of the various treaties fixing the western boundary of the State of Louisiana," and concerning the exact mid-stream boundary in case the Court holds that the west bank is not the boundary. Evidence on the latter question would be premature at this time. All of the other proposed evidence relates to treaties and laws which are subject to judicial notice, and the meaning of none is alleged to be uncertain or doubtful. Therefore, no extrinsic evidence could vary their terms, which clearly show that the boundary is in the middle of the stream and that Texas is entitled to judgment as a matter of law.

III

Because of what has been shown above as to the controlling treaties and laws, Texas is entitled to judgment on the pleadings, and it would be proper and appropriate for the Special Master so to find and report to the Supreme Court.

ARGUMENT

I.

THE COMPLAINT SHOWS TREATIES, LAWS AND FACTS SUBJECT TO JUDICIAL NOTICE WHICH ENTITLE THE STATE OF TEXAS TO JUDGMENT AS A MATTER OF LAW.

It is obvious from the Complaint filed by the State of Texas and the Answer filed by the State of Louisiana that the controlling issue in this case is governed by treaties and statutes of which the Court and the Special Master may take judicial notice.

As framed by the pleadings, the basic issue is whether the western half of the Sabine River from its mouth to the 32nd degree of north latitude was part of the territory of the United States and subject to its exclusive jurisdiction and ownership on July 5, 1848, when Congress gave consent for the State of Texas to extend its eastern boundary so as to include such area. 9 Stat. 245. Texas alleges that the United States possessed such exclusive territorial jurisdiction and ownership on July 5, 1848, by reason of the Louisiana Purchase of 1803 (8 Stat. 200), which was confirmed by the 1819 Treaty with Spain. 8 Stat. 252.

Louisiana alleges that in some manner its boundary fixed by Congress (2 Stat. 641 and 701) and by the Louisiana Constitution of 1812 in the middle of the Sabine River was automatically moved to the west bank of the River as a result of the aforesaid Treaty between the United States and Spain, and that the United States therefore did not possess exclusive territorial ownership and jurisdiction over the area in 1849.

The two States have one thing in common in this

controversy. Both claim title and jurisdiction from the United States. Neither was an original proprietor. The area was not a part of the Republic of Texas and was not within the boundaries of the State of Texas until the State extended its eastern boundary in 1849 pursuant to the Act of Congress mentioned above. Likewise, the area was not within the boundary of the State of Louisiana when it was created in 1812. Louisiana relies solely on its claim that the State acquired the area by operation of the Treaty of 1819. This poses the question of which sovereignty acquired title and dominion over the area under the Treaty of 1819, the United States or the State of Louisiana?

The answer is to be found only in the proper legal interpretation of the aforesaid treaties and statutes, which are cited by the parties in support of their opposing contentions. All are subject to judicial notice, and all are inserted in the Appendix to this brief for the convenience of the Court and the Special Master. There is no uncertainty or dispute about the wording or meaning of their terms, none of which is subject to being varied by extrinsic evidence. The only dispute arises from the opposing interpretations of their legal effect. Interpretation by the Special Master and the Court involves only questions of law.

For these reasons, Texas submits that the case should be decided on the pleadings, briefs and arguments, and based thereon, that the State of Texas is entitled to judgment as a matter of law.

A. THE UNITED STATES HAD EXCLUSIVE TERRITORIAL JURISDICTION AND OWNERSHIP OVER THE WESTERN HALF OF THE SABINE RIVER FROM ITS MOUTH TO THE 32ND DEGREE OF

NORTH LATITUDE ON JULY 5, 1848, WHEN CONGRESS GAVE CONSENT FOR TEXAS TO EXTEND ITS EASTERN BOUNDARY SO AS TO INCLUDE SUCH AREA.

1. THE AREA IN CONTROVERSY WAS PART OF THE TERRITORY ACQUIRED BY THE UNITED STATES FROM FRANCE UNDER THE LOUISIANA PURCHASE TREATY IN 1803.

It is undisputed in this case that the area in controversy was acquired by the United States from France as part of the Louisiana Purchase in 1803. 8 Stat., 200. See Louisiana Purchase Treaty, App., *infra*, p. 1.

By this Purchase, the United States obtained from France a vast area of land between the Mississippi River and the Rocky Mountains, from which all or part of fifteen States have been carved.' The United States claimed that the western boundary of the Purchase was the Rio Grande and that it thus included the area which comprises the present State of Texas.' This is significant in the present controversy only to the extent that it explains why the United States limited the State of Louisiana to a western boundary in the middle of the Sabine River in 1812.

*James K. Hosmer, *History of the Louisiana Purchase* (1902) 202.

*Thomas Jefferson, *The Limits and Bounds of Louisiana* (1804) 27-28, 31-32, published in *Documents Relating to the Purchase and Exploration of Louisiana* (Houghton Mifflin Co., 1904); Adams, *History of the United States*, II, 5-7, 298; Channing, *History of the United States*, IV, 331-333; Thomas M. Marshall, *A History of the Western Boundary of the Louisiana Purchase, 1819-1841* (1914) 1-46.

The Nation was then and for seven years thereafter claiming the Province of Texas, and as shown under 2(d) *infra*, it was the policy of the United States to fix mid-stream boundaries between States and territories. It was not until 1819 that the United States ceded to Spain the area west of the west bank of the Sabine, retaining as part of its territory the western half of the stream.'

2. THE AREA IN CONTROVERSY WAS NEVER INCLUDED WITHIN THE BOUNDARIES OF THE STATE OF LOUISIANA.

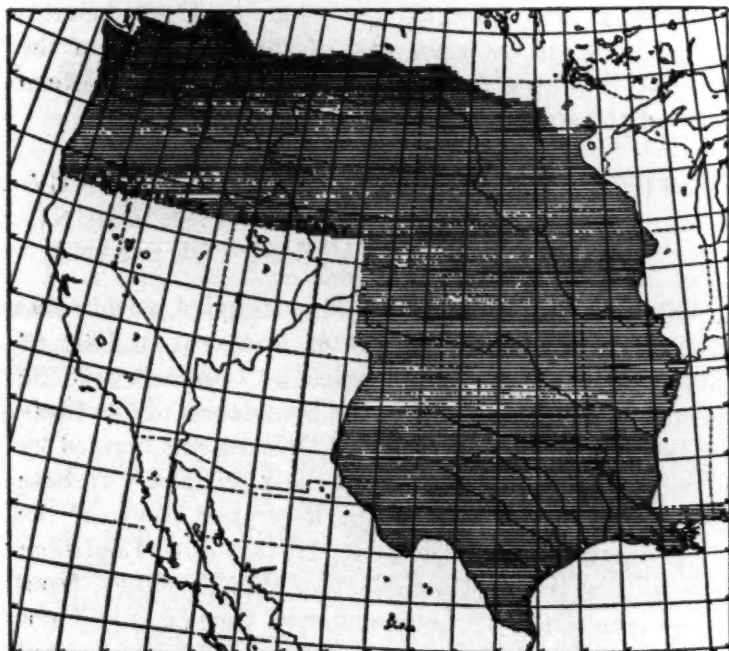
The area in controversy was included within the Territory of Orleans by Act of Congress in 1804 (2 Stat. 283) but was not included by Congress and the people of Louisiana within the boundaries of the State of Louisiana. The Territory of Orleans was created by Congress from that portion of the Louisiana Purchase lying west of the Mississippi River and south of the 33rd degree of north latitude. In this case, Louisiana admits that the west boundary of this Territory, from which the State of Louisiana was formed, "had not been established." From 1804 until 1819, the United States claimed that the Territory of Orleans embraced all of the lands between the Mississippi River and the Rio Grande, including all of the Province of Texas.' Map 4 from Thomas M. Marshall's exhaustive work on the Louisiana Purchase is reproduced on the next page of this brief. It shows Jefferson's final

³ Miller, *Treaties and other International Acts of the United States of America* (1934) 3.

'Defendant's Answer, p. 5.

'See footnote 3, *supra*; Marshall, *A History of the Western Boundary of the Louisiana Purchase, 1819-1841*, 13-16, 21-22, 55-60.

conception of the size of the purchase. All lands depicted south of the 33rd degree of north latitude were included in the Territory of Orleans.



Map 4. Jefferson's final conception of the size of Louisiana.

From Thomas M. Marshall, *A History of the Western Boundary of the Louisiana Purchase, 1819-1841*.

- (a) The Enabling Act of Congress, February 20, 1811, specifically limited the proposed State of Louisiana to a western boundary "along the middle of said (Sabine) river, including all islands to the thirty-second degree of latitude." (2 Stat. 641)

Congress authorized the inhabitants of a certain portion of the Louisiana Purchase to form a government and seek admission as the State of Louisiana.

The relevant portion of the Enabling Act specifically defined the area over which such authority was granted, with the west boundary being fixed in the middle of the Sabine River, as follows:

"That the inhabitants of all *that part* of the territory or country ceded under the name of Louisiana . . . *contained within the following limits*, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn *along the middle of the said river, including all islands to the thirty-second degree of latitude*; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi . . . be, and they are hereby authorized to form for themselves a constitution and state government . . ."

Louisiana does not deny the passage or the terms of this Enabling Act.

- (b) **The Constitution of the State of Louisiana adopted on January 22, 1812, fixed its western boundary in the middle of the Sabine River, using the same language as the Enabling Act.**

Pursuant to the authority granted by Congress, the inhabitants of this specifically defined area (which was carved out of the Territory) formed their government and adopted the State Constitution of Louisiana.* The Preamble of this Constitution fixed the western boundary of the State in the middle of the Sabine River, using the same language as in the Enabling Act, as follows:

*Emphasis supplied unless otherwise noted. The Act is printed in full in the Appendix, *infra*, p. 3.

*West, *Louisiana Statutes Annot., Const.* Vol. 3, 511; App., *infra*, p. 4.

"We, the Representatives of the People of all *that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April 1803, between the United States and France, contained in the following limits, to wit: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty second degree of latitude—thence due north to the Northernmost part of the thirty third degree of north latitude—thence along the said parallel of latitude to the river Mississippi—thence down the said river to the river Iberville, and from thence along the middle of the said river and lakes Maurepas and Pontchartrain to the Gulf of Mexico—thence bounded by the said Gulf of Mexico to the place of beginning, including all Islands within three leagues of the coast—in Convention Assembled . . . do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana."*

A controlling point in this case is that the above constitutional boundary provision has never been amended by Louisiana, except for the addition on the east of a small portion of "West Florida." *Louisiana v. Mississippi*, 202 U.S. 1 (1906). As far as its western boundary in the middle of Sabine River is concerned, this constitutional provision is the existing law of the State of Louisiana. In its Answer, Defendant makes a general denial of the Complaint's specific allegations concerning this constitutional provision and otherwise completely ignores the boundary stated in the Louisiana Constitution of 1812. (Defendant's Answer, pp. 4-6, paragraphs 6 and 7). However, Louisiana does not specifically deny its existence.

In the recent "tidelands" boundary cases, No. 12 Original, October Term, 1949, No. 11 Original, October Term, 1956, and No. 10 Original, 1959, all of which are styled *United States of America v. State of Louisiana*, briefs were filed by former Louisiana Attorney General Bolivar E. Kemp, Jr., and the present Attorney General, Jack P. F. Gremillion, in which they cited and relied on the boundary provision in the Louisiana Constitution of 1812, as the State's basis for claiming ownership of all submerged lands within three leagues of the coast.

As hereinafter shown, *infra*, p. 31, Attorney General Gremillion, in his Supplemental Brief in Opposition to Motion for Judgment in No. 10 Original, October Term, 1959, pages 22-24, cited the boundary contained in the 1812 Constitution, compared inclusion of islands in the Gulf with those included "in the east half of the River Sabine," and insisted that the Gulfward portion of this boundary entitled Louisiana to judgment.

In *Louisiana v. Mississippi*, *supra*, Louisiana cited the Constitution of 1812 boundary provision as the existing boundary of the State, together with the addition of the small area on the east consented to by Act of Congress on April 14, 1812, 2 Stat. 702. The Court quoted the 1812 constitutional boundary provision and based its decision, in part, on that provision as containing the existing boundary limits of the State of Louisiana.

- (c) The Act of Congress, April 8, 1812, admitting Louisiana as a State, repeats the same Sabine boundary (middle of the River) as in the Enabling Act of 1811 and in the Louisiana Constitution of 1812.

The relevant portions of the Act of Admission (2 Stat. 701) are printed in the Appendix, *infra*, p. 5. The Act repeats the same middle of the Sabine River boundary as contained in the Enabling Act and in the Louisiana Constitution of 1812. Louisiana does not deny the terms of the Act but alleges that it and the Enabling Act did not establish the western boundary of the State. (Defendant's Answer, page 4-6, paragraph 6.)

This Act not only reiterates that only "*that part of the territory . . . contained within the following limits*" was admitted, but adds a section which further confirms that a portion of the Territory of Orleans was omitted from the new State. Section 3 states "*that the new State, together with the residue of that portion of the country which was comprehended within the territory of Orleans . . . shall be one district . . .*" for the jurisdiction of a federal court created by the Act.

(d) The mid-stream boundary of the State of Louisiana as fixed by Congress and the Constitution of Louisiana in 1812 was in accordance with the policy and law of the United States relating to river boundaries between states and territories.

Louisiana's Answer indicates that the State might question the reasonableness or intent of Congress in fixing its western boundary in the middle of the Sabine. While reasonableness and intent have little or no bearing in determining what Congress actually did in definite and unambiguous terms, it should be pointed out that the Congress was simply following established policy and law with reference to river boundaries between states and territories. The middle of the stream

is always followed, either by statute or by operation of law, except where prior treaties or agreements have fixed a different line.

The rule was stated by the Supreme Court in *Louisiana v. Mississippi*, *supra*, p. 48, when speaking of the Mississippi River boundary established by Congress and the Louisiana Constitution of 1812. Although the Louisiana boundary limits on the east call only for the Mississippi River, and except for the mid-stream policy and law could have been interpreted to stop at the west bank of the River, the Court said, "Now to repeat, the boundary of Louisiana separating her from the State of Mississippi to the east is the thread of the channel of the Mississippi River . . ." The Court quoted from Mr. Justice Field's opinion in *Iowa v. Illinois*, 147 U.S. 1, as follows:

"When a navigable river constitutes the boundary between two independent States, the line defining the point at which the jurisdiction of the two separates is well established to the middle of the main channel of the stream."

One of the leading works on water boundaries is Shalowitz, *Shore and Sea Boundaries*, published in two volumes by the U. S. Department of Commerce, Coast and Geodetic Survey, in 1962. The author says in Volume Two, 374:

"The use of the geographic middle of the river, or the *Medium filum aquae* or *filum aquae*, as it is sometimes called, is a rule laid down by Grotius, the Dutch jurist who lived during the late 16th and early 17th centuries. . . . In construing a boundary convention between Georgia and South Carolina, the Supreme Court held the boundary line to be the thread of the Savannah and other rivers—the middle of the stream—when the water

is at ordinary stage regardless of the channel of navigation."

In *Georgia v. South Carolina*, 257 U.S. 516 (1922), referred to by Shalowitz, the Court said "Where a river, navigable or non-navigable, is the boundary between two States, and the navigable channel is not involved, in the absence of convention or controlling circumstances to the contrary, each takes to the middle of the stream. . . ." See also *Handly's Lessee v. Anthony*, 5 Wheat. 374, 379 (1820), in which Chief Justice Marshall wrote, "when a great river is the boundary between two nations or States, if the original property is in neither, and there be no convention about it, each holds to the middle of the stream."

There is no reason why the rule or the Act of Congress fixing Louisiana's western boundary in the middle of the Sabine should appear unusual to Louisiana, since all of its other water boundaries (Mississippi, Iberville, Amite, and Pearl Rivers, and Lakes Maurepas and Pontchartrain) go to the middle of the streams either by specific calls or by operation of the above stated rule of law. *Louisiana v. Mississippi, supra*; Douglas, *Boundaries, Areas, etc. of the United States and the Several States*, Geological Survey Bulletin 817, 1930, 166-169.

When Louisiana was admitted as a State in 1812, the United States was claiming a vast area to the west, including all of Texas (Point I, A, 1 *supra*), and under the river boundary policy and law then in effect it would have been more unusual if Congress had not limited Louisiana's western boundary to the middle of the Sabine. In any event, the geographical mid-stream boundary was what Congress specified, and it remains until this day the boundary as agreed to by the people of Louisiana in their Constitution of 1812.

(e) Relinquishment by the United States of that portion of Texas lying west of the Sabine and retention of its title and jurisdiction over the western half of the Sabine River in the Treaty with Spain in 1819, did not result in an extension of the western boundary of Louisiana.

- (1) IN ITS NEGOTIATIONS WITH SPAIN IN 1819, WITH MEXICO IN 1828, AND WITH THE REPUBLIC OF TEXAS IN 1838, WITH RESPECT TO THAT PART OF ITS TERRITORY LYING OUTSIDE OF THE BOUNDARIES OF THE STATE OF LOUISIANA, THE UNITED STATES WAS ACTING FOR ITSELF AND NOT FOR THE STATE OF LOUISIANA.

Louisiana's allegation that the United States was "appearing on the part of the State of Louisiana," in negotiating the Treaty with Spain in 1819 (Answer, 9) is difficult to follow. The same may be said of its osmotic theory that by reason of such Treaty, the western boundary of Louisiana was automatically eased over from the middle of the Sabine to the western bank of the stream.

Ignoring for the moment the constitutional requirement of specific Congressional approval before a state boundary can be changed, it should be pointed out that the territorial boundaries agreed to in the Treaty of 1819 do not touch a single boundary of the State of Louisiana as established by Congress and the Constitution of Louisiana. The Treaty does not mention the State of Louisiana and neither do the extensive negotiations and subsequent commentaries which have been examined by Plaintiff.³ The same is true of the

³ Miller, *Treaties and Other International Acts of the United States*, 3-64; Marshall, *A History of the Western Boundary of the Louisiana Purchase, 1818-1841* (1914), 17-

Treaty of 1828 with Mexico" and the Treaty of 1838 with the Republic of Texas" adhering to the same boundary as in the Treaty of 1819. The relevant portions of all these treaties are printed in the Appendix.

As stated in the opening sentence of the Treaty of 1819, it was concerned with defining as between the United States and Spain "the limits of their respective bordering *territories* in North America." For the United States, this meant the boundaries of the residue of the territory purchased from France, which the United States claimed to include all of Texas, all or portions of what later became the States of Arkansas, Missouri, Iowa, Minnesota, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Montana, Wyoming, Colorado, New Mexico, Idaho, Oregon, and Washington, and part of West Florida.

The sixteen years of negotiations with Spain on this Treaty began in 1803," nine years before the State of Louisiana was created, and continued for seven years after Louisiana was admitted as a State. During all of these sixteen years the United States insisted that it was entitled to all of the Province of Texas, receding at times during the latter years from the Rio Grande to the Colorado River, the Trinity River, and finally to the west bank of the Sabine." By the final terms agreed upon in 1819, the United States relinquished all of Texas west of the west bank of the Sabine in exchange for Florida and the Spanish claim to the

244; *State Papers, Foreign Relations IV*, 422-692; Cox, *The Louisiana-Texas Frontier*, *Southwestern Historical Quarterly* (1913), Vol. XVII, 1-42, 140-187.

"3 Miller, *supra*, 405-420; Marshall, *supra*, 71-123.

"3 Miller, *supra*, 133-143; Marshall, *supra*, 206-241.

"Marshall, *supra*, 70.

"Id., 17-70.

Oregon Territory." There was strong public and official reaction, led by Henry Clay, against the relinquishment of Texas, and final ratifications were not exchanged until February 19, 1821."

If this Treaty had put an end to the plans of national leaders who wanted Texas as a territory and possibly as a future State, there might have been some reason for Congress to have permitted Louisiana to extend its boundary so as to include the western half of the Sabine. However, this was not the case. Henry Clay and John Quincy Adams immediately renewed efforts to regain Texas by diplomacy or purchase."

In 1821, Mexico declared its independence from Spain, and during the next fourteen years of negotiations with the new Mexican Republic as to the same boundary, the main thrust of the negotiators appointed by both President Adams and President Jackson was to effect a purchase of Texas from Mexico and fix the western boundary at the Rio Grande or as far west as possible. Mexico declined in 1828 and, as the price for a Treaty of Commerce, forced the signing of the Treaty of 1828. In it the United States agreed to the boundaries contained in the Treaty with Spain in 1819, but ratifications were delayed until April 5, 1832."

Appointment of commissioners to run the boundary

"Id., 46-70.

"Id., 66-74. Thomas Jefferson wrote to Henry Dearborn on July 5, 1819: "I cannot say I am anxious about the Spanish treaty; in giving up the province of Texas, we gave up a sugar country sufficient for the supply of the United States. I would rather keep that and trust to the inevitable falling of Florida into our mouths." *The Writings of Thomas Jefferson*, Monticello Edition (1904), Vol. XIX, 270, 271.

"Marshall, *supra*, 86-123; Manning, *Texas and the Boundary Issue, 1822-1829* (1913), Southwestern Historical Quarterly, XVII, 217, 240-260.

was delayed, and it was never surveyed as agreed to in the Treaty. During this delay, President Jackson kept Anthony Butler in Mexico for six years still attempting to negotiate a purchase of Texas, with the offer finally reaching \$5 million." Also, Jackson interposed a claim that the Neches River (which lies west of the Sabine but also runs into Sabine Lake) was the stream called the "Sabine" in the Treaty of 1819 and vowed that in any survey he would contend for that river as the boundary and would defend it by force if necessary."

Although not conclusive, there is evidence that Jackson and his friend, General Sam Houston, who came to Texas in 1832, had agreed upon a plan to wrest Texas from Mexico by revolution." In any event, that is what occurred in 1836. At the first election in the new Republic, Sam Houston was named President and the people voted overwhelmingly to seek annexation to the United States." The Republic was recognized as an independent nation on March 1, 1837," and the Sabine portion of the boundary agreed upon with Spain in 1819 and with Mexico in 1828 was first run

"Marshall, *supra*, 86-99.

"Stenberg, *Jackson's Neches Claim, 1829-1836*, Vol. XXXIX, *Southwestern Historical Quarterly*, 255.

"Id., also Stenberg, *The Texas Schemes of Jackson and Houston, 1829-1836*, *Southwestern Social Science Quarterly*, XIII, 264-286; XV, 299-350. As early as 1833, Jackson endorsed a letter from Anthony Butler with these words: "The Convention in Texas meets the 1st of next April to form a constitution for themselves. When this is done, Mexico can never annex her jurisdiction again, or control its legislature. It will be useless after this act to enter into a treaty of boundary with Mexico." Marshall, *supra*, 102.

"John Henry Brown, *History of Texas, 1689-1892*, Vol. II, 99.

"Cong. Globe, 24th Cong., 2d Sess., 270.

on ground in accordance with the Treaty of 1838 between the United States and the Republic of Texas. 8 Stat. 511 Appendix, p. 18. Annexation followed in 1845, or reannexation as many members of Congress called it.¹ Texas was admitted as a State on December 29, 1845. 9 Stat. 108. Within less than three years thereafter, Congress consented to the new State extending its eastern boundary from the west bank of the Sabine to the Louisiana line in the middle of the stream. 9 Stat. 245; Appendix, p. 23.

The foregoing summary of historical facts, which are subject to judicial notice, shows that in the Treaties of 1819, 1828, and 1838, the United States was acting for itself and not for the State of Louisiana, or any other single state, in delimiting the boundaries of the Nation's "*territories*" which bordered the original Province of Texas. They also show that the negotiations and treaties relating to the area west of the middle of the Sabine were chiefly concerned with keeping Texas as a territory or paving the way for it to become a State.

Until 1845, the western half of Sabine Pass, Sabine Lake and Sabine River was all that the Nation salvaged from that part of the territory ceded by France south of the 33rd degree of north latitude and west of the middle of the Sabine. However, the narrow width of this area did not make it any less a territorial possession subject to the Constitution and laws relating to territories of the United States.² This was so held in a decision of the General Land Office, opinion by

¹"President Polk also used the term "reannexation," and called the action by the United States "the peaceful acquisition of a territory once her own." Polk, Inaugural Address, 1845, *Messages and Papers of the Presidents*, V, 2223, 2230-31.

²*Oklahoma v. Texas*, 258 U.S. 574.

the First Assistant Secretary of the Interior, June 27, 1910, in a hearing involving title to certain islands in the Sabine in which both Louisiana and Texas were parties. The opinion said:

"The boundaries thus defined necessarily left the western portion of the westernmost channel (of the Sabine) exclusively in Federal jurisdiction and dominion."

The brief filed by Louisiana in that hearing on September 16, 1909, pages 9-10, conceded this point in the following language:

"The United States enjoyed undisputed and general jurisdiction over the remaining western half, from the middle of the main or sailing channel, of said Sabine Pass, Sabine Lake and Sabine River, to the western shore from the date of the treaty with Spain, February 22, 1819, to July 5, 1848, at which latter date the following Act to extend the Texas boundary (U.S. Stat. Vol. 9, 245) was passed:" (The brief then cites the Act consenting to Texas extending its eastern boundary so as to include the western half of the Sabine Pass, Lake and River.) National Archives, Record Group 49.

This was not the only instance in which the United States has held under Federal jurisdiction and ownership one-half of a river acquired in the Louisiana Purchase. By interpretation of the same Treaty of 1819 with respect to the Red River, on which Congress did not consent for Texas to move its boundary from the south bank to mid-stream, the Supreme Court of the United States held in *Oklahoma v. Texas*, 258 U.S. 574 (1922), that the United States acquired the entire

"39 Decisions Relating to Public Lands 53, 57 (1910), General Land Office, Department of Interior. Opinion and Louisiana Brief copied in full as Items 1 and 2 of Exhibit B filed in support of Motion for Judgment.

river under the Louisiana Purchase of 1803 and the Treaty with Spain in 1819; that it had conveyed to Oklahoma or its Indian Reservations only the north half of the stream; and that the United States retained the south half of Red River. Under this decision, the United States still owns the south half of Red River (a non-navigable stream) even though it gave Oklahoma jurisdiction over it for State purposes. In this case, the Court said:

“Where the United States owns the bed of a non-navigable stream and the upland on one or both sides, it of course, is free when disposing of the upland to retain all or any part of the river bed . . .” (594)

- (2) AN EXTENSION OF LOUISIANA'S STATE BOUNDARY WESTWARD OF THE MIDDLE OF THE SABINE RIVER WOULD HAVE REQUIRED APPROVAL BY THE CONGRESS OF THE UNITED STATES, AND THIS WAS NOT GRANTED.

The western half of the Sabine, being a territorial possession of the United States, its disposition or incorporation within the boundaries of an existing State was governed by Article IV, Section 3 of the United States Constitution and required action by the Congress. The relevant portion of the Constitution reads:

“ . . . no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . .”

There are numerous Supreme Court decisions on this point. In *Van Brocklin v. Tennessee*, 117 U.S. 151, 168 (1886), the Court said:

"But public and unoccupied lands, to which the United States have acquired title . . . by treaty with a foreign country, Congress, under the power conferred upon it by the Constitution, 'to dispose of and make all needful rules and regulations respecting the territory or other property of the United States' has the exclusive right to control and dispose of, as it has with regard to other property of the United States; and no state can interfere with this right or embarrass its exercise."

With reference to Louisiana's theory of having acquired state jurisdiction under the Treaty of 1819, the Supreme Court has held that not only is this impossible but that territory acquired by treaty does not even become a part of the United States without action by Congress. A leading case is *Downes v. Bidwell*, 182 U.S. 244 (1901), in which the status of Puerto Rico was examined. Mr. Justice White wrote:

"When the various treaties by which foreign territory has been acquired are considered in the light of the circumstances which surround them, it becomes to my mind clearly established that the treaty making power was always deemed to be devoid of authority to incorporate territory into the United States without the assent, express or implied, of Congress, and that no question to the contrary has ever been mooted." (319)

In comparing Puerto Rico with the Louisiana Purchase and the Act of Congress enabling the President to take possession for the temporary government thereof, Mr. Justice White said:

"The provisions of this Act were absolutely incompatible with the conception that the territory had been incorporated into the United States by

virtue of the cession. (330) . . . the government of the United States had the undoubted right to acquire, hold, and govern the territory as a possession, and that incorporation into the U.S. could under no circumstances arise solely from a treaty of cession, even though it contained provisions for the accomplishment of such result . . .” (333).

Following the *Downes* case, the Court said in *Dorr v. U.S.*, 195 U.S. 138, 143 (1904):

“Until Congress shall see fit to incorporate territories ceded by treaty into the U.S., we regard it as settled by that decision that the territory is to be governed under the power existing in Congress to make laws for such territories and subject to such constitutional restrictions upon the powers of that body as are applicable to the situation.”

See also *Alabama v. Texas*, 347 U.S. 272 (1953), and *Alcoa Steamship Co. v. Perez*, 295 Fed. Supp. 187 (1968), wherein the Court said:

“Under the Federal Constitution, the United States can acquire territories like any other sovereign; yet its treaty-making power does not mean that by the mere cession, the new territories become a domestic part of the United States *ex proprio vigore*. Formal incorporation requires that Congress take specific action on the matter—.”

Louisiana Attorney General Jack P. F. Gremillion took the same position in a Supplemental Brief in Opposition to Motion for Judgment filed for Louisiana in the tidelands boundary case, *U.S. v. Louisiana, et al*, No. 10, Original, October Term, 1959, as follows: (Emphasis as in the Brief)

“The United States Constitution, Article 4, Section 3, gives to Congress alone the authority to admit new states into the Union and to fix their

boundaries. Article 6 also provides that all provisions of the Constitution and all laws enacted by Congress pursuant thereto, as well as treaties made by the United States, shall be the *supreme law of the land*.

The Acts of Congress, therefore, which admitted the five Gulf Coastal States as members of the Union and described their limits and boundaries, are *the supreme law of the land* . . .

"Louisiana was the first Gulf Coastal State admitted by Act of Congress on April 8, 1812, which described the State boundary the same as in the enabling act on February 20, 1811, which authorized the people of the territory of Orleans to adopt a constitution to establish a state government, and the same as in the State's 1812 constitution, which was approved by the Act of Congress which admitted Louisiana as a State in the Union, within certain specified limits" . . . (Here the limits were described, including the middle of the Sabine boundary)

"Those *limits* include all islands eastward of the middle of the River Sabine to the thirty-second degree latitude and also all islands within three leagues of the coast in the Gulf of Mexico." (22-23)

"However, the reference to the inclusion of islands within the limits of the state, whether in the east half of the River Sabine or within three leagues of the Gulf coast, should not confuse one's thinking with the fact that by boundary description in the Congressional Enabling Act of 1811, the 1812 Louisiana Constitution, and again in the Congressional Act of Admission of April 8, 1812, the purpose was to fix the territorial limits of the State of Louisiana, both landward and seaward and to include all islands within said limits. Therefore, the limits described in those three instruments must be accepted as having contained all that part of the Louisiana territory ceded by

France beginning at the mouth of the River Sabine thence a line to be drawn along the middle of said river, to the thirty-second degree of latitude, etc., to the River Mississippi, thence down said river to the Gulf of Mexico; thence bounded by the said Gulf to the place of beginning within three leagues of the Coast." (24)

"Counsel for the United States must admit, as his failure to produce any evidence to the contrary attests, that no treaty has ever been entered into by the United States which, in any manner, can be construed as compromising any of these state boundaries." (31)

Plaintiff submits that in the above quotations Louisiana was correct in its statement of the law, and that indeed there has been no treaty which did or could constitutionally change those boundaries of 1812 so as to place the western half of Sabine River within the boundaries of Louisiana without the consent of Congress.

3. FROM 1819 UNTIL CONGRESS AUTHORIZED TEXAS TO EXTEND ITS EASTERN BOUNDARY TO THE MIDDLE OF THE SABINE IN 1848, THE UNITED STATES HAD AND EXERCISED EXCLUSIVE TERRITORIAL JURISDICTION AND OWNERSHIP OVER THE WESTERN HALF OF THE SABINE RIVER, AND THIS WAS SO RECOGNIZED BY A RESOLUTION ADOPTED BY THE LOUISIANA LEGISLATURE ON MARCH 16, 1848.

This point has been covered fully in the argument under I.A.2.(e) above, except for the Resolution by the Louisiana Legislature on March 16, 1848, which is copied in full in the Appendix, *infra*, p. 20. The portion which clearly recognizes that the United States had been exercising exclusive territorial jurisdiction

and that the western half of the Sabine was not within the boundary of Louisiana reads:

"Whereas the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof; and that it is of importance . . . that the jurisdiction of some State should be extended over said territory, in order that crimes and offences committed thereupon should be redressed in a speedy and convenient manner:

Therefore be it resolved by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, 1st. That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto,) viz:

"2d. *Be it further resolved, etc.,* That our Senators be instructed, and our Representatives in Congress requested, to procure the passage of a law on the part of the United States, consenting to the extension of the constitution, and the jurisdiction of the laws of the State of Louisiana, over the territory in said river . . ."

B. THE EASTERN BOUNDARY OF THE STATE OF TEXAS WAS PROPERLY AND LEGALLY EXTENDED TO INCLUDE THE WESTERN HALF OF THE SABINE RIVER BY THE ACT OF CONGRESS OF JULY 5, 1848, AND THE ACT OF THE TEXAS LEGISLATURE ON NOVEMBER 24, 1849, AND BY REASON THEREOF TEXAS IS ENTITLED TO JURISDICTION OVER AND OWNERSHIP OF THE AREA, SUBJECT ONLY TO THE CONSTITUTIONAL RIGHTS AND FUNCTIONS OF THE UNITED STATES.

1. THE CONSENT OF CONGRESS.

The consent of Congress in the Act of July 5, 1848 (9 Stat. 245) reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude."

This action had been requested by Resolution of the Texas Legislature approved March 18, 1848. See Appendix, p. 22.

2. THE ACT OF THE TEXAS LEGISLATURE.

The Act of the Texas Legislature extending its eastern boundary to the middle of the Sabine reads in part as follows:

"Sec. 1. Be it enacted by the Legislature of the State of Texas, That in accordance with the consent of the Congress of the United States, given by an act of said Congress, approved July 5th, 1848, the Eastern Boundary of the State of Texas be, and the same is hereby extended so as to include within the limits of the State of Texas, the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude . . ."

3. STATE OWNERSHIP AND JURISDICTION EXTEND TO THE WATERS OF AND LANDS BENEATH NAVIGABLE STREAMS WITHIN STATE BOUNDARIES.

It is conceded by Louisiana that the Sabine River is navigable in fact throughout the length involved

in this controversy and that it has been navigable in fact since 1812. (See Answer, p. 4 and Stipulation). Therefore, under a long-established rule of law, Texas has had State jurisdiction over and ownership of the lands beneath the waters of the western half of the Sabine ever since the area was legally embraced within its boundaries. Navigability and location within State boundaries are the two basic requirements of the rule. It was stated as follows in *Martin v. Waddell*, 16 Pet. 367, 410 (1842):

“For when the Revolution took place, the people of each state became themselves sovereign; and in that character hold the absolute right to *all their navigable waters and the soils under them*, for their own common use, subject only to the rights since surrendered by the Constitution to the general government.”

The most often cited case is *Pollard's Lessee v. Hagan*, 3 How. 212, 229 (1845), which said:

“First. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States.”

In any event, the rule has been confirmed and reinforced by the Submerged Lands Act of 1953, which quitclaimed to the states “title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters.” 67 Stat. 29.

“By 1950, Sheppard's Citations show that this case had been cited with approval in 52 decisions of the U.S. Supreme Court and 244 Federal Court decisions. As to navigable inland waters within a state's “territorial jurisdiction,” it was cited with approval by Mr. Justice Black in *United States v. California*, 332 U.S. 19 (1947).

4. SINCE NOVEMBER 24, 1849, THE CONGRESS AND VARIOUS FEDERAL AGENCIES HAVE CONTINUOUSLY RECOGNIZED THAT THE BOUNDARY BETWEEN TEXAS AND LOUISIANA IS IN THE MIDDLE OF THE SABINE.

In *Louisiana v. Mississippi*, 202 U.S. 1, 53-57 (1906), the Supreme Court held that in a water boundary suit of this nature long recognition of a certain location by Federal agencies was highly persuasive, especially on "general understanding and acquiescence." The Court cited various surveys and maps of Federal agencies which clearly recognized the locations contended for by Louisiana as against Mississippi and decided the case in favor of Louisiana.

In this case we have a greater abundance of Federal surveys and maps, decisions by Federal agencies, and Acts of Congress recognizing the Texas-Louisiana boundary to be in the middle of the Sabine. For instance, during the period of 61 years between 1852 and 1913, Congress made appropriations or directions to the Secretary of War for navigation surveys and improvements on Sabine Pass, Sabine Lake, and Sabine River, in which Texas or Texas and Louisiana are specified as the States within which such projects are located. A list of these is included in Exhibit B in support of Plaintiff's motion for judgment, Item 3. This list is taken from a three volume compilation of River and Harbor Acts compiled and published by the U. S. Army Corps of Engineers in 1913. Appropriations have continued in such manner almost annually on one or more of these projects within the waters of the Sabine, with Congress designating Texas or Texas and Louisiana as the State of location. The waterway serves three of the major ports of the Nation, Port Arthur, Beaumont and Orange.

The General Land Office and Geological Survey of the Department of Interior, and the Army Map Service, U. S. Corps of Engineers, have made surveys and maps from at least as early as 1916 showing the boundary between Texas and Louisiana to be in the middle of the Sabine. A folio of examples has been assembled and will be filed with the Special Master as Exhibit A in support of Plaintiff's Motion for Judgment, and because of the bulk and weight of these maps, Plaintiff will ask permission to file only one copy of Exhibit A with the Master and deliver only one copy to Defendant. This Exhibit A folio includes:

1. 1916 and 1922 maps entitled "The State of Louisiana" published by the U.S. General Land Office, with the latter having been made by the Geological Survey.
2. A 1932-1935 series of 13 maps prepared from surveys made by the U.S. Geological Survey in cooperation with the State of Louisiana with the heading, "STATE OF LOUISIANA, BOARD OF STATE ENGINEERS," along with the "GEOLOGICAL SURVEY" heading.
3. A 1948-49 series of maps prepared under the direction of the U.S. Corps of Engineers by the Army Map Service. These maps have the following notation: "Users noting any errors or omissions on this map are urged to mark hereon and forward directly to Commanding Officer, Army Map Service, Washington, D. C." Also, there is included a 1953 to 1956 series prepared by the Army Map Service.
4. A 1954 to 1960 series of maps prepared from surveys by the U.S. Geological Survey in cooperation with the State of Louisiana, covering all of the Sabine, showing the boundary in mid-stream, and with the printed notation: "For Sale by the U.S. Geological Survey . . . and by the State of Louisiana, Department of Public Works, Baton

Rouge 4, Louisiana." Under the cooperative cost sharing program on surveys of this nature, the State Department of Public Works was mailed a set of "advance proofs" with a notation "This proof is sent to you for your review and comment. If you observe errors or have suggestions, please make notations on the face of the map and return one copy within TEN days." The Louisiana Department of Public Works accepted the prints and was still distributing them as late as May 20, 1970. See affidavit of James H. Quick and attached map, Exhibit B in support of Motion for Judgment, Item 4.

GENERAL LAND OFFICE INTERPRETATIONS AND DECISION

By letter of June 25, 1903, the Acting Commissioner of the General Land Office, U.S. Department of Interior, wrote Dr. N. O. Brenizer at Austin, Texas, that the eastern boundary of Texas included the western half of Sabine Pass, Sabine Lake and Sabine River. (National Archives, Records Group 49). On March 1, 1932, the Acting Assistant Commissioner wrote S. A. Mayo, Mayo Title Company at Lake Charles, Louisiana, a review of the Texas-Louisiana boundary history and advised that Congress had permitted Texas to extend to the middle of the Sabine, saying "this would appear to fix the boundary line through Sabine Lake." (File 144727 "E," Records General Land Office, Washington, D. C.) These are included as Items 5 and 6 in Exhibit B referred to above.

On June 27, 1910, in a controversy before the General Land Office between Louisiana and Texas over certain islands in the Sabine, the First Assistant Secretary of the Interior wrote an opinion reviewing the boundary history and concluded:

"The boundaries thus defined necessarily left the western portion of the westernmost channel exclusively in Federal jurisdiction and dominion.

"It was not until the act of July 5, 1848 (9 Stat., 245), that the State of Texas acquired a right to any part of the waters of said river. By that act the United States consented that the State of Texas may 'extend her eastern boundary so as to include within her limits, one-half of Sabine Pass, one-half of Sabine Lake, also one-half of Sabine River, from the mouth as far north as the 32° of north latitude.' The eastern boundary of Texas was thus made to coincide with the western boundary of Louisiana as fixed by the act of admission, and the State of Texas for the first time acquired jurisdiction and dominion over any part of the waters of said river." 39 Land Decisions 53. (Item 1, Exhibit B in support of Motion for Judgment)

Beginning in 1885, the Geological Survey of the U.S. Department of Interior has published lengthy books on the boundaries of the United States and the several States and the history of such boundaries. Each of these official publications shows the boundary between Texas and Louisiana to be in the middle of the Sabine and traces the history of same as Plaintiff has done in this brief. See chapters on Louisiana and Texas, Geological Survey Bulletin 13 of 1885; Bulletin 171 of 1900; Bulletin 226 of 1904; Bulletin 689 of 1923; and Bulletin 817 of 1930 by Edward M. Douglas.

Thus, in keeping with the 1848 Act of Congress authorizing Texas to annex the area in controversy, Congress and Federal agencies, often with the cooperation of the State of Louisiana, have continuously recognized the middle of the Sabine as the boundary between the two States.

C. IN ADDITION TO ITS RECORD TITLE, TEXAS HAS ACQUIRED TITLE TO AND JURISDICTION OVER THE AREA BY PRESCRIPTION, BECAUSE THE STATE OF LOUISIANA CONTINUOUSLY ACQUIESCED IN THE EXERCISE OF POSSESSION, JURISDICTION AND DOMINION OVER THE AREA BY THE UNITED STATES FROM 1812 TO 1849 AND BY THE STATE OF TEXAS FROM 1849 UNTIL THIS CONTROVERSY AROSE IN RECENT YEARS.

As a matter of law, the jurisdiction and title of Texas is so clear and certain from the controlling treaties and statutes that Plaintiff does not believe there is any need to reach the issue of prescription. However, this point will be developed if for no other reason than to show that possession and the exercise of jurisdiction and dominion by Texas and acquiescence by Louisiana have conformed exactly with the boundary fixed as a matter of law.

1. EXERCISE OF POSSESSION, JURISDICTION AND DOMINION BY THE UNITED STATES FROM 1812 TO 1849, AND ACQUIESCENCE BY LOUISIANA.

The exclusive possession and general jurisdiction exercised by the United States over the western half of the Sabine from 1803 to 1849 is fully discussed under the foregoing point I.A. 3 and need not be repeated here. The point was conceded by Louisiana in its brief filed before the General Land Office on September 16, 1909, in the above mentioned hearing involving two islands in the Sabine River." At page 9 of this brief it was said:

"Brief in Behalf of the State of Louisiana, September 16, 1909, in case between Louisiana and Texas reported in 39 Land Decisions 53; National Archives, Record Group 49; copied in full as Item 2, Exhibit B.

"The State of Louisiana had enjoyed undisputed and complete jurisdiction over the eastern half, to the middle of the main or sailing channel, of Sabine Pass, Sabine Lake and Sabine river, 'including all islands'. The United States enjoyed sovereignty and general jurisdiction over the remaining western half, from the middle of the main or sailing channel, of the said Sabine Pass, Sabine Lake and Sabine River, to the Western shore, from the date of the treaty with Spain, February 22, 1819, to July 5, 1848, at which latter date the . . . Act to extend the Texas boundary (U.S. Stat. Vol. 9, 245) was passed . . ."

No stronger evidence of recognition and acquiescence by the State of Louisiana could be found than the Resolution of its Legislature on March 16, 1848, which recited that "the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof . . ."

2. ACQUIESCENCE OF LOUISIANA IN BOUNDARY ACTS OF CONGRESS IN 1848 AND THE TEXAS LEGISLATURE IN 1849.

If the State of Louisiana desired to complain or protest Texas' possession and jurisdiction on the western half of the Sabine, it should have done so when Congress was considering Resolutions of both States seeking consent to annex the area," or at least immediately after Congress acted in favor of Texas on July 5, 1848. 9 Stat. 245. It did not complain, but acquiesced in the action by Congress and the Texas Act of November 24, 1849, holding its protest until

"Senate Documents, 30th Cong., 1st Sess., 1848, Misc. No. 135; Appendix, p. 20.

"See the Texas Resolution, id., Document 123; Appendix, p. 22.

oil was discovered beneath the waters more than a century later. It is interesting to note that the two United States Senators from Louisiana agreed to the Act of 1848. See report in Appendix, pp. 23 and 24.

3. EXERCISE OF POSSESSION, JURISDICTION AND DOMINION BY TEXAS FROM 1849 TO DATE, AND ACQUIESCENCE BY LOUISIANA.

(a) Texas' State, County and City law enforcement agencies have continuously enforced laws and ordinances over the western half of the Sabine, and Louisiana State, Parish and City officials have acquiesced therein.

In addition to extending its general laws over the area in 1849, the Texas Legislature, in the same Act, extended the boundaries of its counties to the middle of the Sabine, using the following language:

"... and that the several counties of this State, bounded by said Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude, shall have and exercise jurisdiction over such portions of the western half of said Pass, Lake and River as are opposite to said counties respectively . . ."

Also the Cities of Port Arthur and Orange, Texas, have extended their city limits to the middle of Sabine Lake and Sabine River, respectively. Maps showing these extensions are included in the Exhibit A filed in support of Motion for Judgment, along with affidavits showing exercise of city jurisdiction thereover without any protests from Louisiana.

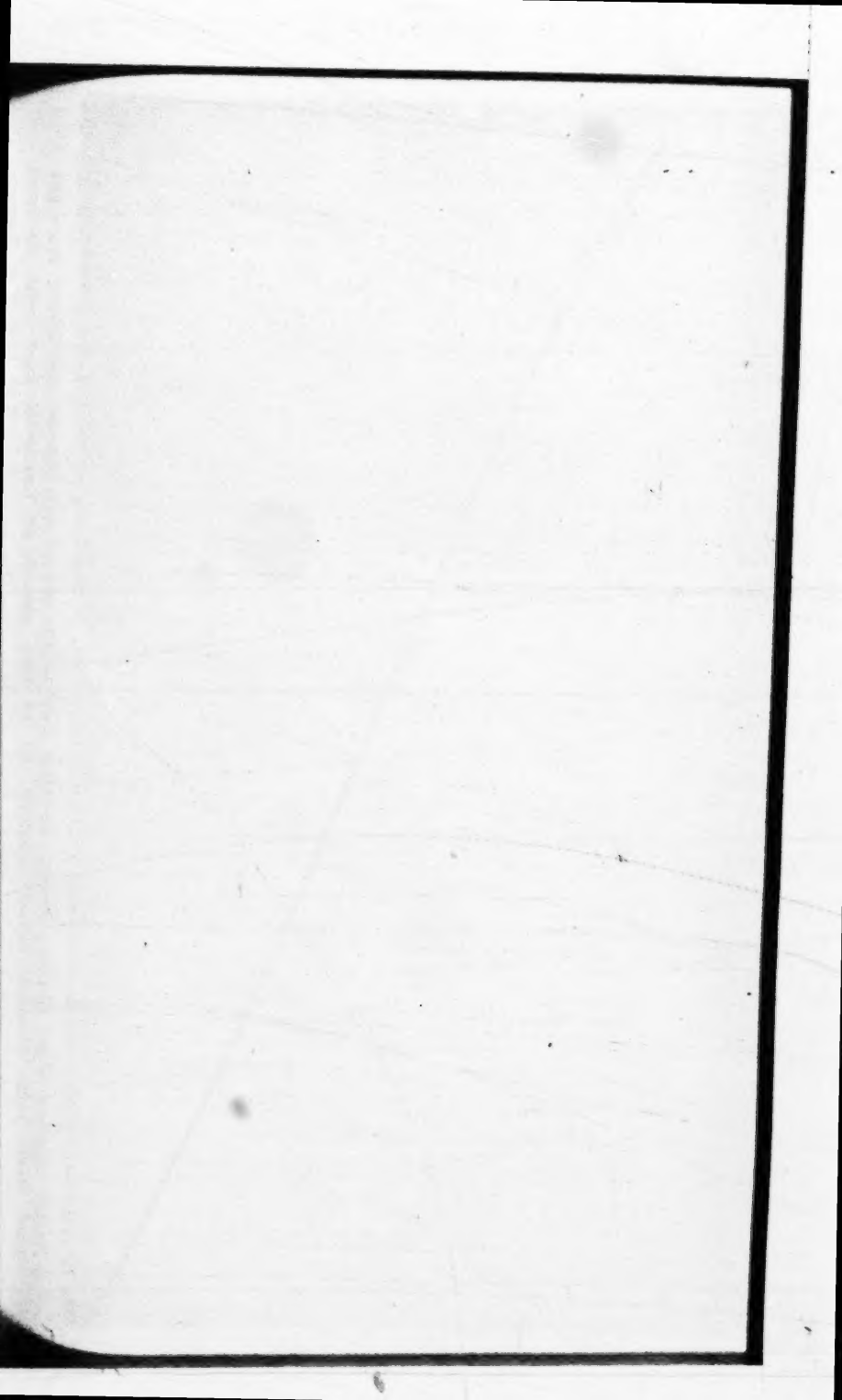
See the affidavits of Texas State Land Commissioner, Jerry Sadler, and Texas Parks and Wildlife Law Enforcement Coordinator, Robert L. Cross, in the

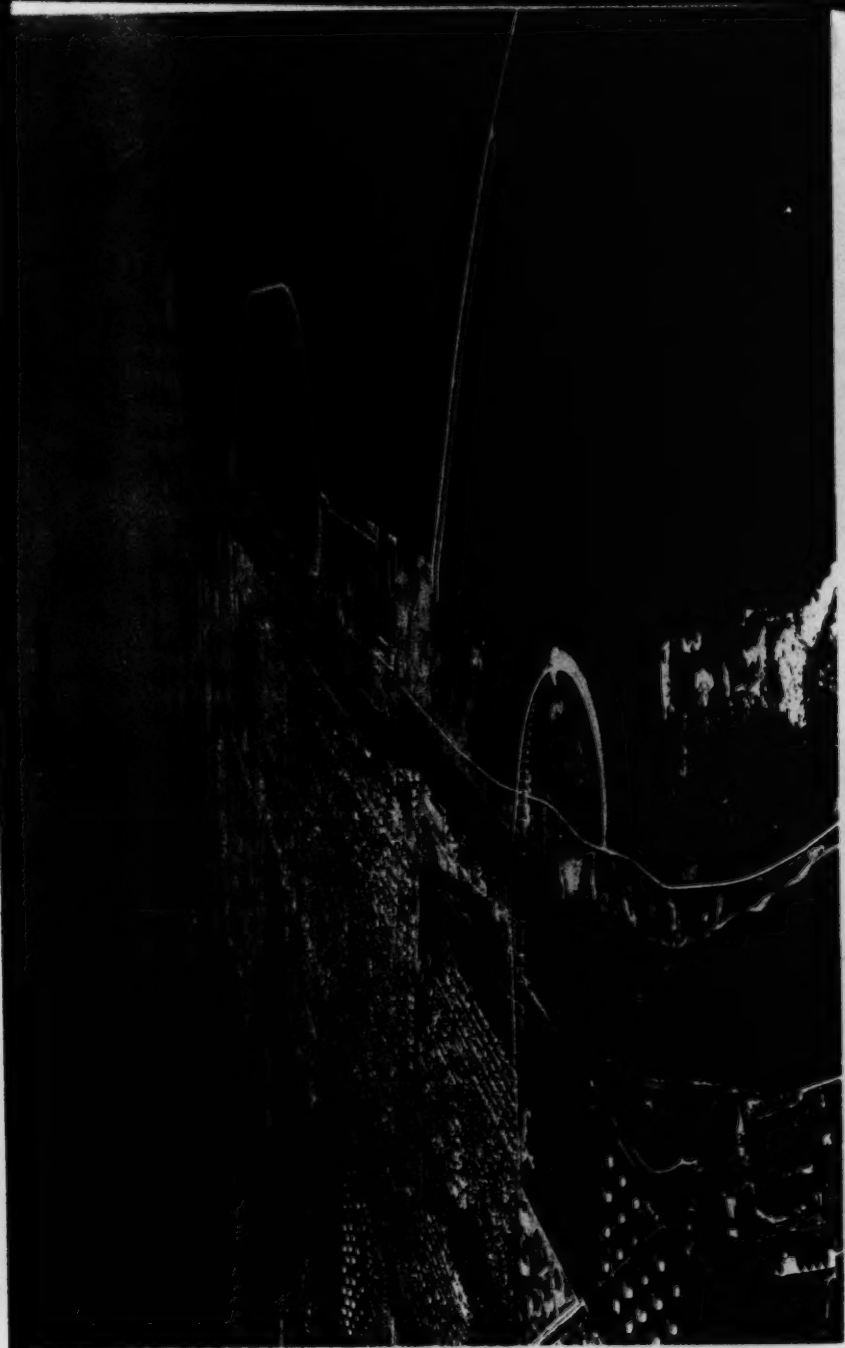
Appendix, pages 34 and 25, for details known to them and reflected by the records of their offices concerning exercise of State jurisdiction to the middle of the Sabine, without protest from Louisiana until 1964. This protest applied only to mineral leasing. The originals of these affidavits are included in Exhibit B as Items 8 and 9. The Cross affidavit shows not only acquiescence of Louisiana to our continued enforcement of game and fish laws on the west half of the Sabine, but cooperative agreements signed by Louisiana counterparts relating to enforcement on the east half of the streams. The Sabine has the only waters common to Texas and Louisiana, and these agreements clearly recognize that the common boundary is in these waters.

(b) Since 1926, Texas and its Counties have paid for construction of bridges across the western half of the Sabine under cooperative agreements with Louisiana and its Parishes.

Louisiana admits that Texas has been paying half of the costs for bridges across the Sabine (Answer, p. 7). The affidavit of Texas State Highway Engineer Dingwall, Appendix, p. 43, shows the extent of this construction work since 1926. Also, Jefferson County, Texas and Cameron Parish, Louisiana, have constructed at their joint expense a causeway across Sabine Lake. See Map and affidavit of Robert A. Bowers, Director of Planning, City of Port Arthur, which are included in the Exhibit A filed in support of Motion for Judgment. Also, affidavit of Bowers and copy of contract are in Exhibit B as Items 10 and 11.

(c) Under grants from the State of Texas beginning in 1934, the City of Port Arthur has spent large sums of money on a bridge, golf course, and other





Aerial view of Port Arthur, Texas, showing new bridge across ship channel connecting the mainland (left) with Pleasure Island (center), an 18 mile stretch of improved land built up from dredging in the western half of Sabine Lake (right). See map and affidavit of Robert A. Bowers.

improvements on land reclaimed from the bed of the west half of Sabine Lake, without any protest from Louisiana.

The City of Port Arthur has obtained from the State of Texas grants to several thousand acres of submerged lands in Sabine Lake, including over 3000 acres which have been reclaimed from the bed of the lake and on which has been built an island approximately 18 miles long, known as Pleasure Island. The City has expended millions of dollars in construction of a bridge, pleasure pier, marina, golf course, utilities and other improvements on this land over a period of more than 30 years without any protest from Louisiana. See Map and Affidavit of Robert A. Bowers cited in (b) above.

(d) Jefferson County, Texas, has spent large sums on roads and bridges on land reclaimed from the western half of the bed of Sabine Lake without any protest from Louisiana.

On the 18 mile Pleasure Island, reclaimed by dredging from the western half of Sabine Lake as mentioned in (c) above, Jefferson County, Texas, has constructed a hard-surfaced road and has furnished the local costs on a multimillion dollar bridge being constructed by the U. S. Corps of Engineers from the mainland to Pleasure Island, thus far without protest from Louisiana. See Bowers Map and affidavit cited in (b) above.

(e) Texas has paid half of navigation improvements on the Sabine in cooperation with Louisiana.

Louisiana's appropriation for navigation improvements on the Sabine on March 19, 1857 was conditioned on Texas appropriating "at least an equal sum for the same purpose." This was done (4 Gam. 427).

Texas, its Sabine River Authority, which was created by statute in 1951 (Article 8280-133), the cities of Port Arthur and Orange, and the Orange Navigation District, have continued to bear local costs for such projects. 4 Gam. 967, 1129; 8 Gam. 171.

(f) Texas has sold sand, shell, and marl from the western half of Sabine Lake without protest from Louisiana.

(g) Texas has dedicated the submerged lands and minerals beneath the western half of the Sabine to its Permanent School Fund and has executed 78 mineral leases thereon since 1950.

The affidavit of the Commissioner of the Texas General Land Office, Appendix, p. 34, sets forth the details concerning the above stated exercise of State ownership of the lands beneath the waters of the Sabine. As shown, these sales and leases were without protest from Louisiana until very recent years, and then only as to mineral leasing. The minerals beneath these lands are dedicated to the Permanent School Fund of Texas, and all revenues therefrom are devoted to school purposes. Article 5416, Vernon's Civil Statutes of Texas.

(h) Texas and its County units of government have collected taxes on private leases and improvements in the area, and Louisiana and its Parishes have not done so.

The State and Orange, Newton and Jefferson counties have collected taxes on private leases and improvements, including four producing oil wells, within the western half of the Sabine, without protest from Louisiana. See detailed affidavits and exhibits in Exhibit B, Items 12, 13 and 14.

(i) The Supreme Court of Louisiana held in 1901 that the boundary between Texas and Louisiana was in the middle of the Sabine.

One of the strongest and most binding recognitions by Louisiana occurred in 1901, when the highest court in the State of Louisiana held that the middle of the Sabine was the boundary between Texas and Louisiana. In *State v. Burton*, 29 So. 970 (1901), there was a Louisiana bootlegger who was selling his wares from a boat anchored in the western half of the river but tied by a rope to a floating gambling establishment which was in turn tied to the Louisiana east bank of the river. He was convicted of selling liquor without a license. In reversing, the Supreme Court of Louisiana said:

"It cannot be contended that Louisiana courts have jurisdiction over Texas territory. That the middle of the Sabine is the boundary line between Louisiana and Texas . . . (the Court then quotes the treaties and statutes referred to in this brief). . . . The jurisdiction of the Louisiana courts cannot be extended over Texas territory by means of a rope. . . . Louisiana cannot extend the jurisdiction of her courts over Texas territory by act of her legislature. . . ." (Full opinion reproduced as Item 15 in Exhibit B).

This decision and the boundary holding was referred to with approval in subsequent Louisiana Supreme Court decisions in *State v. Burton*, 31 So. 291 (1902); *Parish of Red River v. Parish of Caddo*, 43 So. 556 (1907); and *State v. Malone*, 64 So. 711 (1914).

(j) The Louisiana Attorney General and other attorneys for the State have recognized the mid-stream boundary in the Sabine.

Plaintiff has heretofore cited and quoted from sev-

eral cases in which the Attorney General of Louisiana has recognized the Sabine boundary of Louisiana as being in the middle of the stream as provided in the Louisiana Constitution of 1812. These are summarized as follows:

1. In *Louisiana v. Mississippi*, 202 U.S. 1 (1906), the Attorney General of Louisiana quoted the 1812 boundary provision, including the call for middle of the Sabine and insisted that this set forth the existing boundaries of the State, except for the addition adjacent to Mississippi on the east.

2. In *U. S. v. Louisiana, et al*, No. 10, Original, October Term 1959, the present Attorney General cited the entire boundary as contained in the Louisiana Constitution and Act of Admission, insisting that it was the "supreme law of the land" and had not been changed by any treaty. See detailed quotes and discussion at pages 31-33, *supra*.

3. In the case before the General Land Office in 1909, referred to above (39 Land Decisions 53), the attorney representing Louisiana filed a brief in which he recognized the boundary and the law relating to same exactly as we have argued it to be in this brief. See quotes and discussion under I.C.2. above, and full text in Exhibit B, Item 2.

4. The brief of the Attorney General of Louisiana and the District Attorney filed in *State v. Burton*, 29 So. 970, *supra*, concedes that the boundary between Texas and Louisiana is in the middle of Sabine River. Brief on Behalf of the State, No. 13,936, Supreme Court of Louisiana. See Item 16, Exhibit B.

The law to be applied to the above acts of long possession and jurisdiction by Texas on the one hand and long acquiescence therein by Louisiana on the

other hand was stated and applied in the case of *Louisiana v. Mississippi*, *supra*, in which Louisiana was the possessor and winning party, as follows:

"The question is one of boundary, and this court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it should be accepted as conclusive, whatever the international rule might be in respect of the acquisition by prescription of large tracts of country claimed by both. *Virginia v. Tennessee*, 148 U.S. 503; *Indiana v. Kentucky*, 136 U.S. 479; *Missouri v. Kentucky*, 11 Wall. 395; *Rhode Island v. Massachusetts*, 4 How. 591."

In *Michigan v. Wisconsin*, 270 U.S. 295, the Court said:

"The rule, long settled and never doubted by this Court, is that long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority."

II

THE ANSWER OF THE STATE OF LOUISIANA TO THE COMPLAINT RAISES NO GENUINE ISSUE AS TO ANY MATERIAL FACT, AND IS INSUFFICIENT IN LAW.

As heretofore pointed out, the controlling issue in this case is governed by treaties, laws and facts which are subject to judicial notice. None of the terms of the controlling treaties and statutes are alleged by Louisiana to be uncertain or ambiguous, and in no other manner has Louisiana raised any material fact issue. In this connection, Plaintiff replies to Louisiana's separate defenses as follows:

A. REPLY TO FIRST DEFENSE.

To Defendant's allegation that the Complaint "fails to state a claim on which relief can be granted," Plaintiff simply says that it is obvious from the pleadings (See Defendant's Answer, page 8, paragraph 8) that a real controversy does exist and that this Court has jurisdiction under Article III, Section 2, Clause 2, of the Constitution of the United States. The Court has so decided in granting leave to file the Complaint.

B. REPLY TO SECOND DEFENSE.

The provision in the Texas Annexation Agreement (5 Stat. 797) that it was "subject to the adjustment by the United States of all questions of boundary that might arise with other governments" was applicable to disputes with foreign nations, particularly Mexico, and it does not require that the United States be a party to or appear on behalf of Texas in this dispute with another State of the Union."

Further, the provision applied only to that territory which was in 1845 "properly included within and rightfully belonging to the Republic of Texas." The western half of the Sabine River was never within the boundaries of the Republic of Texas. It became a part of the State of Texas only by Act of Congress on July 5, 1848 (9 Stat. 245) authorizing the State to "extend her eastern boundary" to include the western half of the Sabine River and by Act of the Texas

"See the court's opinion in *United States v. Louisiana, et al.*, 363 U.S. 1, 44-62, for a complete discussion of the meaning of this provision and the manner in which it was carried to conclusion. There the Court said at page 44: "Rather, the precise fixation of the new State's boundaries was left to future negotiations with Mexico. The circumstances surrounding the Resolution's passage make it clear that this was the understanding of Congress."

Legislature so extending the boundary on November 24, 1849.

If in fact the United States had any responsibility under the Texas Annexation Agreement for adjusting future domestic boundaries, it was no greater than the responsibility it has under the Constitution with respect to approval of changes in any State's boundary, and it was fully discharged with respect to the Sabine boundary by the Act of July 5, 1848. In no event is the United States a necessary party to this action, since it has already acted and this suit seeks to uphold that action and the jurisdiction and title the United States granted to Texas as against the adverse claims of Louisiana.

C. REPLY TO THIRD AND FOURTH DEFENSES.

These defenses are based entirely upon Louisiana's theory that the Treaty between the United States and Spain in 1819 somehow automatically moved its boundary from the middle of the Sabine to the west bank without any necessity of Congressional action. Plaintiff has answered these defenses in great detail under point A.2. above. They raise no material fact issue, because the Treaty speaks for itself in clear and definite terms which do not mention the State of Louisiana. These terms cannot be altered by extrinsic evidence, and in any event, Congress did not grant consent for any such boundary change.

D. REPLY TO FIFTH DEFENSE.

This defense relates solely to the alleged need for taking evidence in this case. It fails to present any material issue of fact, because it proposes only to develop the history and intent of treaties and acts which are definite and certain on their face. All are

subject to judicial notice, and the meaning of none are alleged to be uncertain or doubtful. Therefore, there is no need at this time for the taking of any evidence.

It is true that Plaintiff has alleged long possession and exercise of jurisdiction over the controverted area, first by the United States from 1803 to 1849 and thereafter by the State of Texas, and that Louisiana has acquiesced therein. However, in view of the admissions in Louisiana's Answer and the narrowing of the issues to the legal effect of the controlling treaties and legislative acts, it is doubtful that there will be any need to reach the issue of prescription. Even if it should be necessary to develop such issue, the proof can be made by both parties through statutes enacted, official acts, maps and documents which are subject to judicial notice and suitable for attachment to the briefs.

Louisiana further suggests that if the Court should determine that the western boundary of the State is in the middle of the Sabine, then evidence will be required to determine the exact location of the boundary in the River, Pass and Lake, including the location of all islands which belong to Louisiana. This seems premature at this stage of the case. The question now is whether the boundary is in the middle of the Sabine or along the west bank. If it is determined to be in the middle, and if a subsequent controversy arises which cannot be resolved by the States as to the exact location of the middle of the stream at any given point, that would be time enough for the Court to ask a Master to hear evidence and make findings. In many original actions involving boundaries the Court has retained jurisdiction for such future specific determinations.

III

THE STATE OF TEXAS IS ENTITLED TO JUDGMENT ON THE PLEADINGS, AND IT WOULD BE PROPER AND APPROPRIATE FOR THE SPECIAL MASTER SO TO FIND AND REPORT TO THE SUPREME COURT.

Unless Louisiana in its reply brief shows some justification not now apparent for the taking of evidence, this case is ripe for determination on Plaintiff's Motion for Judgment. The Complaint, the Answer, this brief in support of the Motion for Judgment, Louisiana's brief to be filed in opposition to the Motion, and the arguments of counsel, will give ample opportunity for all relevant matters to be placed before the Special Master for judicial notice. Thereupon, Texas contends that it will be entitled to judgment on the Motion and that it would be proper and appropriate for the Master so to find and report to the Supreme Court.

CONCLUSION

For the foregoing reasons, it is submitted that Plaintiff's Motion for Judgment should be set for hearing on a date which will permit Defendant 60 days within which to file its brief in opposition to the Motion and the Plaintiff 30 days for a reply, and after such hearing the Special Master should make his findings as a matter of law and report them to the Supreme Court.

It is submitted that the pleadings and the treaties, laws and facts subject to judicial notice entitle Plaintiff to judgment as prayed for as a matter of law.

Respectfully submitted,
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NOLA WHITE
First Assistant Attorney
General of Texas

HOUGHTON BROWNLEE, JR.
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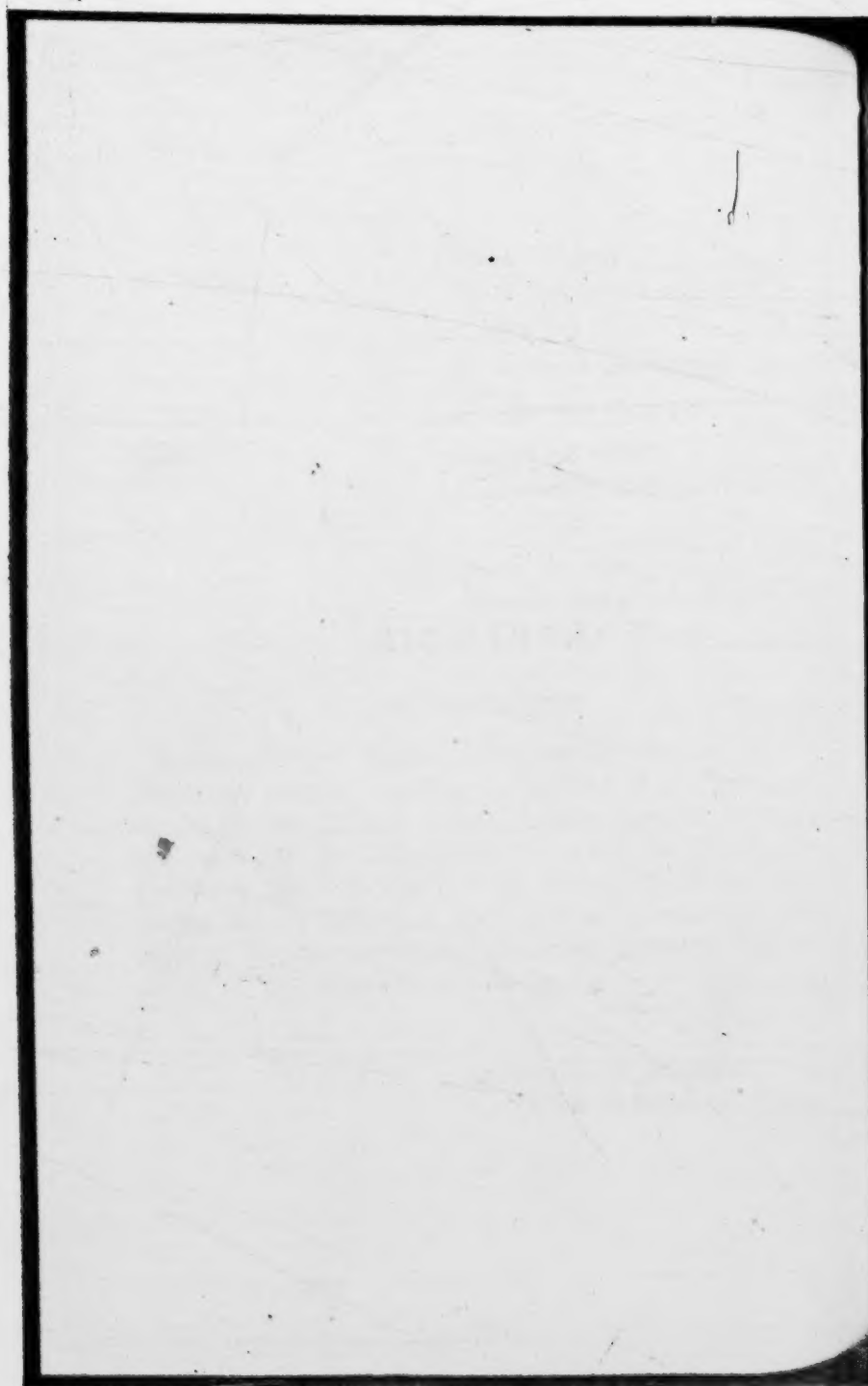
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Assistant Attorneys General
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Special Assistant Attorney
General of Texas

CERTIFICATE

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the 10th day of July, 1970, I served copies of the foregoing Brief in Support of Plaintiff's Motion for Judgment, by first class mail, postage prepaid, to the office of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas



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APPENDIX

1. Louisiana Purchase Treaty, 1803, Proclaimed October 21, 1803, 8 Stat. 200.

ARTICLE I

Whereas by the Article the third of the Treaty concluded at St. Idelfonso the 9th Vendémiaire an 9/1st October 1800 between the First Consul of the French Republic and his Catholic Majesty it was agreed as follows.

“His Catholic Majesty promises and engages on his part to cede to the French Republic six months after the full and entire execution of the conditions and Stipulations herein relative to his Royal Highness the Duke of Parma, the Colony or Province of Louisiana with the Same extent that it now has in the hands of Spain, & that it had when France possessed it; and Such as it Should be after the Treaties subsequently entered into between Spain and other States.”

And whereas in pursuance of the Treaty and particularly of the third article the French Republic has an incontestible title to the domain and to the possession of the said Territory—The First Consul of the French Republic desiring to give to the United States a strong proof of his friendship doth hereby cede to the said United States in name of the French Republic for ever and in full Sovereignty the said territory with all its rights and appurtenances as fully and in the Same manner as they have been acquired by the French Republic in virtue of the above mentioned Treaty concluded with his Catholic Majesty.

ARTICLE II

In the cession made by the preceding article are in-

cluded the adjacent Islands belonging to Louisiana all public lots and Squares, vacant lands and all public buildings, fortifications, barracks and other edifices which are not private property—The Archives, papers & documents relative to the domain and Sovereignty of Louisiana and its dependences will be left in the possession of Commissaries of the United States, and copies will be afterwards given in due form to the Magistrates and Municipal officer of Such of the said papers and documents as may be necessary to them.

ARTICLE III

The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible according to the principles of the federal Constitution to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and in the mean time they shall be maintained and protected in the free enjoyment of their liberty, property and the Religion which they profess.

* * *

2. Act Creating the Territory of Orleans, March 26, 1804, 2 Stat. 283.

An Act erecting Louisiana into two territories, and providing for the temporary government thereof.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That all that portion of country ceded by France to the United States, under the name of Louisiana, which lies south of the Mississippi territory, and of an east and west line to commence on the Mississippi river, at the thirty-third degree of north latitude, and to extend west to the western boundary of

the said cession, shall constitute a territory of the United States, under the name of the territory of Orleans. * * *

3. Enabling Act for Creation of the State of Louisiana, February 20, 1811, 2 Stat. 641.

An Act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of such state into the Union, on an equal footing with the original states, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude; thence due north, to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down said river to the river Iberville; and from thence along the middle of said river and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning: including all islands within three leagues of the coast, be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper, under the provisions and upon the conditions hereinafter mentioned.

4. Constitution of Louisiana, January 22, 1812.*

We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April 1803, between the United States and France, contained in the following limits, to wit: *beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude—thence due north to the Northernmost part of the thirty-third degree of north latitude**—thence along the said parallel of latitude to the river Mississippi—thence down the said river to the river Iberville, and from thence along the middle of said river and lakes Maurepas and Ponchartrain to the Gulf of Mexico—thence bounded by the said Gulf of Mexico to the place of beginning, including all Islands within three leagues of the coast—in Convention Assembled by virtue of an act of Congress, entitled “an act to enable the people of the Territory of Orleans to form a constitution and State government and for the admission of said State into the Union on an equal footing with the original States, and for other purposes:” In order to secure to all the citizens thereof the enjoyment of *the right of life, liberty and property*, do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana. * * *

*West's Louisiana Statutes Anno., Const. Vol. 3, p. 511. Emphasis supplied.

5. Act for Admission of Louisiana as a State,
April 8, 1812, 2 Stat. 701.

An Act for the admission of the State of Louisiana into the Union, and to extend the laws of the United States to the said state.

WHEREAS, the representatives of the people of all that part of the territory or country ceded, under the name of "Louisiana," by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three, between the United States and France, contained within the following limits, that is to say: *beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude; then, due north, to the northernmost part of the thirty-third degree of north latitude;* thence, along the said parallel of latitude, to the river Mississippi; thence, down the said river, to the river Iberville; and from thence, along the middle of the said river, and lakes Maurepas and Ponchartrain, to the gulf of Mexico; thence, bounded by the said gulf, to the place of beginning, including all islands within three leagues of the coast; did, on the twenty-second day of January, one thousand eight hundred and twelve, form for themselves a constitution and state government, and give to the said state the name of the state of Louisiana, in pursuance of an act of Congress, entitled "An act to enable the people of the territory of Orleans to form a constitution and state government, and for the admission of the said state into the Union, on an equal footing with the original states, and for other purposes:" And the said constitution having been transmitted to Congress, and by them being hereby approved; therefore*

*Emphasis supplied.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana: *Provided,* That it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States, without any tax, duty, impost or toll therefor, imposed by the said state; and that the above condition, and also all the other conditions and terms contained in the third section of the act, the title whereof is herein before recited, shall be considered deemed and taken, fundamental conditions and terms, upon which the said state is incorporated in the Union.

SEC. 2. *And be it further enacted,* That until the next general census and apportionment of representatives, the said state shall be entitled to one representative in the House of Representatives of the United States; and that all the laws of the United States, not locally inapplicable, shall be extended to the said state, and shall have the same force and effect within the same, as elsewhere within the United States.

SEC. 3. *And be it further enacted,* That the said state, together with the residue of that portion of country which was comprehended within the territory of Orleans, as constituted by the act, entitled "An act erecting Louisiana into two territories, and providing for the temporary government thereof," shall be one dis-

trict, and be called the Louisiana district; and there shall be established in the said district, a district court, to consist of one judge, who shall reside therein, and be called the district judge; and there shall be, annually, four stated sessions of the said court held at the city of Orleans; the first to commence on the third Monday in July next, and the three other sessions progressively on the third Monday of every third calendar month thereafter. * * *

6. Treaty, 1819, of Amity, Settlement and Limits Between the United States and Spain, Proclaimed February 22, 1821, 8 Stat. 252.

Treaty of Amity, Settlement and Limits between The United States of America, and His Catholic Majesty.

The United-States of America and His Catholic Majesty desiring to consolidate on a permanent basis the friendship and good correspondence which happily prevails between the two Parties, have determined to settle and terminate all their differences and pretensions by a Treaty, which shall designate with precision the limits of their respective bordering territories in North-America.

With this intention the President of the United-States has furnished with their full Powers John Quincy Adams, Secretary of State of the said United-States, and His Catholic Majesty has appointed the Most Excellent Lord Don Luis de Onis, Gonzales, Lopez y Vara, Lord of the Town of Rayaces, Perpetual Regidor of the Corporation of the City of Salamanca, Knight Grand-Cross of the Royal American Order of Isabella, the Catholic, decorated with the Lys of La Vendée, Knight-Pensioner of the Royal and distinguished Spanish Order of Charles the Third, Member of the

Supreme Assembly of the said Royal Order; of the Counsel of His Catholic Majesty; His Secretary with Exercise of Decrees, and His Envoy Extraordinary and Minister Plenipotentiary near the United-States of America.

And the said Plenipotentiaries, after having exchanged their Powers, have agreed upon and concluded the following Articles.

ARTICLE 1.

There shall be a firm and inviolable peace and sincere friendship *between the United-States and their Citizens, and His Catholic Majesty,** his Successors and Subjects, without exception of persons or places.

ART. 2.

His Catholic Majesty cedes *to the United-States*, in full property and sovereignty, *all the territories* which belong to him, situated to the Eastward of the Mississippi, known by the name of East and West Florida. The adjacent Islands dependent on said Provinces, all public lots and Squares, vacant Lands, public Edifices, Fortifications, Barracks and other Buildings, which are not private property, Archives and Documents, which relate directly to the property and sovereignty of said Provinces, are included in this Article. The said Archives and Documents shall be left in possession of the Commissaries, or Officers of the United-States, duly authorized to receive them.

ART. 3.

The Boundary Line between the two Countries, West of the Mississippi, shall begin on the Gulph of Mexico,

*Emphasis supplied throughout this document.

at the mouth of the River Sabine in the Sea, continuing North, along the Western Bank of that River, to the 32d degree of Latitude; thence by a Line due North to the degree of Latitude, where it strikes the Rio Roxo of Natchitoches, or Red River, then following the course of the Rio-Roxo Westward to the degree of Longitude, 100 West from London and 23 from Washington, then crossing the said Red-River, and running thence by a Line due North to the River Arkansas, thence, following the Course of the Southern bank of the Arkansas to the source of Latitude 42, North, and thence by that parallel of Latitude to the South-Sea. The whole being as laid down in Melishe's Map of the United-States, published at Philadelphia, improved to the first of January, 1818. But if the Source of the Arkansas River shall be found to fall North or South of Latitude 42, then the Line shall run from the said Source due South or North, as the case may be, till it meets the said Parallel of Latitude 42, and thence along the said Parallel to the South Sea: all of the Islands in the Sabine and the said Red and Arkansas Rivers, throughout the Course thus described, *to belong to the United-States*; but the use of the Waters and the navigation of the Sabine to the Sea, and of the said Rivers, Roxo and Arkansas, throughout the extent of the said Boundary, on their respective Banks, shall be common to the respective inhabitants of both Nations. The Two High Contracting Parties agree to cede and renounce all their rights, claims and pretentions *to the Territories* described by the said Line: that is to say—The United States hereby cede to His Catholic Majesty, and renounce forever, all their rights, claims, and pretentions *to the Territories* lying West and South of the above described Line; and, in like manner, His Catholic Majesty *cedes to the said United-States*, all his

rights, claims, and pretensions to any Territories, East and North of the said Line, and, for himself, his heirs and successors, renounces all claim to the said Territories forever.

ART. 4.

To fix this Line with more precision, and to place the Land marks which shall designate exactly the limits of both Nations, each of the Contracting Parties shall appoint a Commissioner, and a Surveyor, who shall meet before the termination of one year from the date of the Ratification of this Treaty, at Natchitoches, on the Red River, and proceed to run and mark the said Line from the mouth of the Sabine to the Red River, and from the Red River to the River Arkansas, and to ascertain the Latitude of the source of the said River Arkansas, in conformity to what is above agreed upon and stipulated, and the Line of Latitude 42, to the South Sea: they shall make out plans and keep Journals of their proceedings, and the result agreed upon by them shall be considered as part of the Treaty, and shall have the same force as if it were inserted therein. The two Governments will amicably agree respecting the necessary Articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

ART. 5.

The inhabitants of the ceded Territories shall be secured in the free exercise of their Religion, without any restriction, and all those who may desire to remove to the Spanish Dominions shall be permitted to sell, or export their Effects at any time whatever, without being subject, in either case, to duties.

ART. 6.

The Inhabitants of *the Territories* which His Catholic Majesty *cedes to the United-States* by this Treaty, shall be incorporated in the Union of the United-States, as soon as may be consistent with the principles of the Federal Constitution, and admitted to the enjoyment of all the privileges, rights and immunities of the Citizens of the United States.

ART. 7.

The Officers and Troops of His Catholic Majesty in *the Territories hereby ceded* by him to the United States shall be withdrawn, and possession of the places occupied by them shall be given within six months after the exchange of the Ratifications of this Treaty, or sooner if possible, by the Officers of His Catholic Majesty, to the Commissioners or Officers of the United-States, duly appointed to receive them; and the United-States shall furnish the transports and escort necessary to convey the Spanish Officers and Troops and their baggage to the Havana.

ART. 8.

All the grants of land made before the 24th of January 1818, by His Catholic Majesty or by his lawful authorities in the *said Territories ceded by His Majesty to the United-States*, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the Territories had remained under the Dominion of His Catholic Majesty. But the owners in possession of such lands, who by reason of the recent circumstances of the Spanish Nation and the Revolutions in Europe, have been prevented from fulfilling all the conditions

of their grants, shall complete them within the terms limited in the same respectively, from the date of this Treaty; in default of which the said grants made since the 24th of January 1818, when the first proposal on the part of His Catholic Majesty, for the cession of the Floridas was made, are hereby declared and agreed to be null and void.

* * *

The records of the proceedings of the said Commissioners, together with the vouchers and documents produced before them, relative to the claims to be adjusted and decided upon by them, shall, after the close of this transaction, be deposited in the Department of State of the United-States; and copies of them or any part of them, shall be furnished to the Spanish Government, if required, at the demand of the Spanish Minister in the United-States.

* * *

ART. 12.

The Treaty of Limits and Navigation of 1795, remains confirmed in all and each one of its Articles, excepting the 2, 3, 4, 21 and the second clause of the 22d Article, which, having been altered by this Treaty, or having received their entire execution, are no longer valid.

With respect to the 15th Article of the same Treaty of Friendship, Limits and Navigation of 1795, in which it is stipulated, that the Flag shall cover the property, the Two High Contracting Parties agree that this shall be so understood with respect to those Powers who recognize this principle; but if either of the two Contracting Parties shall be at War with a Third Party, and the other Neutral, the Flag of the Neutral shall cover the property of Enemies, whose Government acknowledges this principles, and not of others.

ART. 13.

Both Contracting Parties wishing to favour their mutual Commerce, by affording in their ports every necessary Assistance to their respective Merchant Vessels, have agreed, that the Sailors who shall desert from their Vessels in the ports of the other shall be arrested and delivered up, at the insistance of the Consul—who shall prove nevertheless, that the Deserters belonged to the Vessels that claimed them, exhibiting the document that is customary in their Nation: that is to say, the American Consul in a Spanish Port, shall exhibit the Document known by the name of *Articles*, and the Spanish Consul in American Ports, the Roll of the Vessel; and if the name of the Deserter or Deserters, who are claimed, shall appear in the one or the other, they shall be arrested, held in custody and delivered to the Vessel to which they shall belong.

The United-States hereby certify, that they have not received any compensation from France for the injuries they suffered from her Privateers, Consuls, and Tribunals, on the Coasts and in the Ports of Spain, for the satisfaction of which provision is made by this Treaty; and they will present an authentic statement of the prizes made, and of their true value, that Spain may avail herself of the same in such manner as she may deem just and proper.

ART. 15.

The United-States to give to His Catholic Majesty, a proof of their desire to cement the relations of Amity subsisting between the two Nations, and to favour the Commerce of the Subjects of His Catholic Majesty, agree that Spanish Vessels coming laden only with productions of Spanish growth, or manufacture direct-

ly from the Ports of Spain or of her Colonies, shall be admitted for the term of twelve years to the Ports of Pensacola and St. Augustine in the Floridas, without paying other or higher duties on their cargoes or of tonnage than will be paid by the vessels of the United-States. During the said term no other Nation shall enjoy the same privilege within the *ceded Territories*. The twelve years shall commence three months after the exchange of the Ratifications of this Treaty.

* * *

7. Treaty of Limits Between the United States and the United Mexican States, Proclaimed April 5, 1832, 1828, 8 Stat. 372.

Treaty of Limits between the United States of America and the United Mexican States.

The limits of the United States of America with the bordering territories of Mexico having been fixed and designated by a solemn treaty concluded and signed at Washington on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, between the respective Plenipotentiaries of the government of the United States of America on the one part and of that of Spain on the other: And whereas, the said treaty having been sanctioned at a period when Mexico constituted a part of the Spanish Monarchy, it is deemed necessary now to confirm the validity of the aforesaid treaty of limits, regarding it as still in force and binding between the United States of America and the United Mexican States.

With this intention, the President of the United States of America has appointed Joel Roberts Poinsett their Plenipotentiary; and the President of the United Mexican States their Excellencies Sebastian Camacho and José Ygnacio Esteva:

And the said Plenipotentiaries having exchanged their full powers, have agreed upon and concluded the following articles:

ARTICLE FIRST.

The dividing limits of the respective bordering territories of the United States of America and of the United Mexican States being the same as were agreed and fixed upon by the above-mentioned treaty of Washington concluded and signed on the twenty-second day of February in the year of one thousand eight hundred and nineteen, the two high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty, which are herein recited as follows:

ARTICLE SECOND.

The boundary line between the two countries, west of the Mississippi, shall begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the 32nd degree of latitude; thence, by a line due north, to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River; then, following the course of the Rio Roxo westward, to the degree of longitude 100 west from London and 23 from Washington; then, crossing the said Red River, and running thence, by a line due north, to the river Arkansas; thence, following the course of the southern bank of the Arkansas, to its source, in latitude 42 north; and thence, by that parallel of latitude, to the South Sea. The whole being as laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818. But if the source of the Arkansas river shall be found to fall north or south of latitude 42, then the line shall

run from the said source due south or north, as the case may be, till its meets the said parallel of latitude 42, and thence, along the said parallel, to the South Sea: *All the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States*; but the use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, or their respective banks, shall be common to the respective inhabitants of both nations.

The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line; that is to say: the United States hereby cede to His Catholic Majesty, and renounce forever, all their rights, claims, and pretensions to the territories lying west and south of the above described line; *and in like manner, His Catholic Majesty cedes to the said United States*, all his rights, claims, and pretensions to any territories east and north of the said line; and for himself, his heirs, and successors, renounces all claim to the said territory forever.

ARTICLE THIRD.

To fix this line with more precision, and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a Commissioner and a Surveyor, who shall meet, before the termination of one year from the date of the ratification of this treaty, at Natchitoches, on the Red River, and proceed to run and mark the said line, from the mouth of the Sabine to the Red River, and from the Red River to the river Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is agreed upon

and stipulated, and the line of latitude 42, to the South Sea: they shall make out plans, and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should be deemed necessary.

* * *

Additional Article to the Treaty of Limits concluded between the United States of America and the United Mexican States on the 12 day of January 1828.

The time having elapsed which was stipulated for the exchange of ratifications of the Treaty of Limits between the United Mexican States and the United States of America, signed in Mexico on the 12th day of January 1828, and both Republics being desirous that it should be carried into full and complete effect with all due solemnity, the President of the United States of America has fully empowered on his part Anthony Butler a Citizen thereof and Charge d'Affaires of the said States in Mexico. And the Vice-President of the United Mexican States, acting as President thereof, has in like manner fully empowered on his part their Excellencies Lucas Alaman, Secretary of State, and Foreign Relations, and Rafael Mangino, Secretary of the Treasury, who after having exchanged their mutual powers found to be ample and in form have agreed and do hereby agree on the following article.

The ratifications of the Treaty of Limits concluded on the 12th January 1828, shall be exchanged at the City of Washington within the term of one year count-

ing from the date of this agreement and sooner should it be possible.

The present additional article shall have the same force and effect as if it had been inserted word for word in the aforesaid Treaty of the 12th of January of 1828, and shall be approved and ratified in the manner prescribed by the Constitutions of the respective States.

In faith of which the said Plenipotentiaries have hereunto set their hands and affixed their respective seals. Done in Mexico the fifth of April of the year one thousand eight hundred thirty one, the fifty fifth of the Independence of the United States of America, and the eleventh of that of the United Mexican States.

[Seal] A: BUTLER

[Seal] LUCAS ALAMAN

[Seal] RAFAEL MANGINO

(Emphasis Supplied)

**8. Boundary Convention Between the United States
and the Republic of Texas, 1838, Proclaimed
October 13, 1838, 8 Stat. 511.**

Convention between the United States of America
and the Republic of Texas, for marking the bound-
ary between them.

Whereas the treaty of limits made and concluded on the twelfth day of January in the year of our Lord one thousand eight hundred and twenty eight between the United States of America on the one part and the United Mexican States on the other is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of the said United Mexican States:

And whereas it is deemed proper and expedient in order to prevent future disputes and collisions between the United States and Texas in regard to the boundary between the two countries as designated by the said treaty, that a portion of the same should be run and marked without unnecessary delay:

The President of the United States has appointed John Forsyth their plenipotentiary, and the President of the Republic of Texas has appointed Memucan Hunt its plenipotentiary:

And the said plenipotentiaries having exchanged their full powers, have agreed upon and concluded the following articles:

ART. 1. Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet before the termination of twelve months for the exchange of the ratifications of this Convention at New Orleans and proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulph of Mexico to the Red River. They shall make out plans and keep journals of their proceedings and the result agreed upon by them shall be considered as part of this Convention and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons and also as to their respective escorts, should such be deemed necessary.

ART. 2. And it is agreed that until this line shall be marked out as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all territory over which its jurisdiction has hitherto been exercised, and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may

suit the convenience of both the contracting parties, until which time each of the said parties shall exercise without the interference of the other within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been heretofore usually exercised.

ART. 3. The present Convention shall be ratified and the ratifications shall be exchanged at Washington within the term of six months from the date hereof, or sooner if possible.

In witness whereof, we, the respective Plenipotentiaries, have signed the same, and have hereunto affixed our respective seals. Done at Washington, this twenty fifth day of April in the year of our Lord one thousand eight hundred and thirty eight, in the sixty second year of the Independence of the United States of America, and in the third of that of the Republic of Texas.

[Seal] MEMUCAN HUNT

[Seal] JOHN FORSYTH

9. Resolution of the Louisiana Legislature, March 16, 1848, Requesting Consent to Extend Western Boundary*

Resolution of the Legislature of Louisiana, in favor of the extension of the jurisdiction of that State to the western bank of the Sabine, April 28, 1848. No. 212—Resolution.

Whereas the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof; and that it is of importance to the citizens living con-

*Senate Documents, 30th Con., 1st Sess., 1848, Misc. 135.

tiguous thereto, and to the people in general, that the jurisdiction of some State should be extended over said territory, in order that crimes and offenses committed thereupon should be redressed in a speedy and convenient manner:

Therefore be it resolved by the Senate, and House of Representatives of the State of Louisiana in General Assembly convened, 1st. That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto.) viz:

Between the middle of the Sabine river and the western bank thereof, to begin at the mouth of said river where it empties into the Gulf of Mexico, and thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the States of—.

2nd. Be it further resolved, etc., That our Senators be instructed, and our Representatives in Congress requested, to procure the passage of a law on the part of the United States, consenting to the extension of the constitution, and the jurisdiction of the laws of the State of Louisiana, over the territory in said river.

3d. And be it further resolved, etc., That the governor of the State be requested to forward a copy of these to each of our Senators and Representatives in Congress.

PRESTON W. FARRAR,

Speaker of the House of Representatives.

TRAISMON LANDRY,

Lieut. Governor and President of the Senate.

Approved March 16, 1848.

ISAAC JOHNSON,
Governor of the State of Louisiana.

**10. Resolution of the Texas Legislature, March 18,
1848, Requesting Consent to Extend Eastern
Boundary***

*Resolution of the Legislature of Texas, in favor of
the passage of an act, extending the jurisdiction
of that State over the Sabine pass, the Sabine lake,
and the Sabine river, April 17, 1848.*

*Joint Resolution instructing our Senators and re-
questing our Representatives in Congress to use
their efforts to have a law passed to extend the
jurisdiction of Texas over one half of Sabine pass,
lake, and river.*

SEC. 1. *Be it resolved by the Legislature of the
State of Texas, That our Senators be instructed, and
our Representatives in Congress be requested, to use
their efforts to have a law passed by Congress, ex-
tending the jurisdiction of Texas over one half of
the waters of Sabine lake, Sabine pass, and Sabine
river, up to the 32° of north latitude.*

SEC. 2. *Be it further resolved, That the governor
of this State be required to transmit to each of our
Senators and Representatives in Congress a copy of
the foregoing joint resolution.*

JAMES W. HENDERSON,
Speaker of the House of Representatives.

JOHN A. GREER,
President of the Senate.

Approved March 18, 1848.

GEO. T. WOOD

*Senate Documents, 30th Cong., 1st Sess., 1848, Misc. 123.

11. Act Giving Consent to the State of Texas to Extend Her Eastern Boundary so as to Include Within Her Limits One-half of Sabine Pass, Sabine Lake and the Sabine River as Far North as the Thirty-second Degree of North Latitude, July 5, 1848, 9 Stat. 245.

An Act giving the Consent of the Government of the United States to the State of Texas to extend her eastern Boundary so as to include within her Limits one half of Sabine Pass, Sabine Lake, and Sabine River, as far north as the thirty second Degree of North Latitude.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude.

Approved, July 5, 1848.*

Report of Senate Action

*Congressional Globe, 1st Sess., 30th Cong., Dec. 6, 1847-Aug. 14, 1848; New Series No. 56 at p. 882:

"In Senate

Thursday, June 29, 1848

Reports From Committees

Mr. Butler, from the Committee on the Judiciary, reported an act giving the consent of the Government of the United States to the State of Texas to extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake,

and the Sabine River as far north as the 32° of north latitude.

Mr. B. asked for the immediate consideration of the bill, and briefly explained its character. The boundary of the United States, it was known, embraced the Sabine River and lake to its western shore. The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore belonged to the United States, and was not included in the State of Louisiana; therefore, the boundary of the State and that of the United States, was not identical. The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas for the purpose of enabling the latter to extend her criminal jurisdiction to the Louisiana boundary. There could be no objection to the bill, and he hoped it would now be passed.

Mr. Johnson, of La., and Mr. Downs in behalf of the State of Louisiana, expressed their acquiescence in the arrangement.

The bill was then read a third time and passed."

12. Act of Texas Legislature Extending Eastern Boundary, November 24, 1849, 3 Gammels Laws of Texas 442.

An Act to extend the Eastern Boundary of the State of Texas, so as to include within its limits the western half of Sabine Pass, Sabine Lake and Sabine River up to the Thirty-second Degree of North Latitude.

SEC. 1. Be it enacted by the Legislature of the State of Texas, that in accordance with the consent of the Congress of the United States, given by an act of

said Congress, approved July 5, 1848, the Eastern Boundary of the State of Texas be, and the same is hereby extended so as to include within the limits of the State of Texas, the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude; and that the several counties of this State, bounded by said Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude, shall have and exercise jurisdiction over such portions of the western half of said Pass, Lake and River as are opposite to said counties respectively; and this act shall take effect from and after its passage.

Approved, November 24, 1849.

**"13. Affidavit of Robert L. Cross
Law Enforcement Coordinator
Texas Parks and Wildlife Department**

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

I, Robert L. Cross, being first duly sworn, on my oath depose and say as follows:

I am State Law Enforcement Coordinator for the agency of the State of Texas now known as the Texas Parks and Wildlife Department, which has the responsibility of enforcing the game and fish laws of the State. I have served in this position since October 1, 1969. Prior to that, from November 1, 1958, to September 1, 1961, I served as District Supervisor for the agency, with headquarters in Houston. My district covered fifteen southeast Texas counties, including those adjoining Sabine Pass, and Sabine Lake and portions of the Sabine River. From September

1, 1961, to October 1, 1969, I served as Regional Enforcement Supervisor for the agency, with my region covering thirty-three southeast Texas counties, including those mentioned above. My duties as aforesaid enabled me to know the facts set forth herein.

During all of my period of service, and even until this day, our Texas State agency and its officers enforced the laws relating to game and fish on the west one-half of the Sabine River, Sabine Lake and Sabine Pass. During this time, I never heard of any question being raised as to our right to enforce the Texas laws in this area. During this period, we filed and prosecuted many cases for violations of Texas laws within the waters of the west half of Sabine Pass, Sabine Lake, and Sabine River. These were filed and prosecuted in the Texas counties whose boundaries extended by law to the center of said streams.

At no time during this period did the State of Louisiana or its officials seek to enforce the Louisiana game and fish laws on the Texas side or western half of these streams, nor did they ever assert, so far as I ever heard, the right to do so. On the contrary, Louisiana officials enforced their game and fish laws only on the eastern half of the Sabine Pass, Sabine Lake and Sabine River and always respected our jurisdiction on the western half of these streams. We always have had very fine cooperation from the Louisiana Wildlife and Fisheries Commission and its officers, and our relationships have been most cordial. On many occasions our Texas agency and the Louisiana Commission would work together and conduct joint operations on the Sabine River, checking nets for violations, with our officers going along the western one-half of the river and Louisiana officers simul-

taneously going along the eastern one-half of the river.

In a cooperative endeavor to alleviate enforcement problems, the Texas Parks and Wildlife Commission and the Louisiana Wildlife and Fisheries Commission entered into a reciprocal agreement, authorized by the Legislatures of the respective States, signed on December 14, 1967, by the Louisiana Commission and on February 13, 1968, by the Texas Commission, setting forth who could fish "the common boundary waters of Texas and Louisiana," which agreement provides, inter alia, that a possessor of a license from either State may fish anywhere in the said waters. A true and correct copy of this agreement is attached hereto as Exhibit A.

Another reciprocal agreement was entered into by the two Commissions, signed by Louisiana September 22, 1969, and by Texas October 3, 1969, setting forth a joint agreement as to bag limits for fish on Toledo Bend Lake, a lake created by the recent construction of Toledo Bend Dam on the Sabine River. A true and correct copy is attached as Exhibit B.

The Texas Health Department in recent years has closed portions of the western one-half of Sabine Lake to oystering, because of pollution conditions. Louisiana has done likewise on the eastern half of the Lake.

The Texas Parks and Wildlife Commission has for at least fifteen years granted permits to shell dredgers for the taking of shell from the bed of Sabine Lake on the western half thereof, and thousands of tons of shell have been dredged from the bed of the western half of the Lake under these permits, with compensation therefor being paid to the State of Texas. These, like all the activities of our agency on the western half of Sabine Lake, Sabine Pass and Sabine River,

were conducted in full view of our counterpart officers of Louisiana whose boats patrolled their eastern half of the streams, and I never heard of any objection or assertion by them against our rights and jurisdiction over the waters and beds of the western half of the streams. On the contrary, as indicated above, they worked in complete cooperation and recognition of our rights and jurisdiction west of the center of the streams and confined their similar activities east of the center of the streams. This has been true not only during my personal knowledge of the facts since November 1958, but according to my predecessors and the records of this agency, such activities by Texas officials on the western half of these streams and complete acquiescence therein by Louisiana officials has existed since the predecessor of this agency, The Texas Game, Fish and Oyster Commission, was created in 1929.

Executed at Austin, Texas, this the 11th day of June, 1970.

ROBERT L. CROSS

SWORN TO AND SUBSCRIBED BEFORE ME
by Robert L. Cross on this the 11th day of June, 1970.

W. C. PARKER

Notary Public in and for
Travis County, Texas

Exh. A to Cross Affidavit

RECIPROCAL AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, by virtue of Article 978-f-6, Texas Penal Code, the Texas Game and Fish Commission now the Texas Parks and Wildlife Commission, may enter into agreements of reciprocity with the author-

ized agents, commissions or boards of states having a common border with the State of Texas to provide for fishing on lakes and rivers located upon a common boundary between Texas and such other states by sports fishermen who hold a fishing license issued by either state; and,

WHEREAS, the State of Louisiana through the Louisiana Wild Life and Fisheries Commission is authorized by House Concurrent Resolution No. 211 to enter into reciprocal agreements with the proper officials of the State of Texas permitting sports fishermen, either duly licensed or exempt from the licensing law of said state, to fish common boundary lakes and rivers between Louisiana and Texas; and,

WHEREAS, the States of Texas and Louisiana intend to enter into such an agreement so that bona fide residents of Texas and Louisiana may fish in the common boundary waters of the two states; and,

WHEREAS, to insure the proper administration of the law, rules and regulations in force in the States herein identified, it is the intention that the term "resident" shall mean any person who resides in the State of Texas or the State of Louisiana for a period of not less than six (6) consecutive months; and

WHEREAS, Article 4032-b-1, R.C.S. of Texas exempts persons under seventeen (17) years of age and over sixty-five (65) years of age from the legal requirements of possessing a fishing license when sports fishing in the waters of Texas; and,

WHEREAS, R.S. 56:331 of Louisiana exempts any person under sixteen (16) years of age, whether a resident or non-resident, from obtaining a sports fishing license or paying said license fee in order to sports-fish the waters of Louisiana; and,

WHEREAS, R.S. 56:331 and 643 of Louisiana exempts any person over sixty (60) years of age from paying the sports fishing license fee but does require said person to obtain and possess a free license, when sports fishing the waters of Louisiana; and,

WHEREAS, the foregoing exemptions shall reciprocally apply to citizens of Texas and Louisiana when fishing in common boundary waters.

NOW, THEREFORE, this reciprocal agreement made and entered into in duplicate by and between the Texas Parks and Wildlife Commission, in behalf of the State of Texas, and the Louisiana Wild Life and Fisheries Commission, in behalf of the State of Louisiana, wherein it is mutually agreed as follows:

(1) The term "resident" shall mean any person who is a bona fide resident and who has so continuously resided in either of the said States for a period of not less than six (6) months.

(2) A resident of the State of Texas, under seventeen (17) years of age and over sixty-five (65) years of age may sports-fish in the common boundary waters of Texas and Louisiana without being required to possess a fishing license.

(3) A resident of the State of Louisiana, under sixteen (16) years of age may sports-fish in the common boundary waters of Texas and Louisiana without being required to possess a fishing license or pay the license fee. A resident of the State of Louisiana over sixty (60) years of age must obtain and possess a valid license to sports-fish the common boundary waters of Texas and Louisiana but is exempt from paying the license fee.

(4) A resident of either of the aforementioned States that is required to have a sports-fishing license

may sports-fish in the common boundary waters of the aforementioned States with a license issued by either State.

(5) The Texas Parks and Wildlife Commission is authorized to issue proclamations approving negotiations as entered into by this reciprocal agreement and such agreement shall become effective in the common boundary waters of Texas and Louisiana thirty (30) days after the agreement has been lawfully accepted by the Louisiana Wild Life and Fisheries Commission.

(6) Immediately after the adoption of this agreement a copy of the rules and regulations contained in the agreement will be numbered and filed in the office of the Secretary of State, in the office of the Parks and Wildlife Commission, Austin, Texas, and a copy thereof will be filed in the office of each County Clerk and each County Attorney in the counties within which the rivers and lakes involved are located, the office of the Secretary of State of Louisiana, the Louisiana Wild Life and Fisheries Commission and a copy shall be furnished to each employee of the Texas Parks and Wildlife Commission who performs duties in said counties in which common boundary waters are located.

(7) Either State to this agreement may withdraw therefrom upon six (6) months notice in writing, addressed to the other State.

**TEXAS PARKS AND WILDLIFE
COMMISSION**

By: WILL ODOM
Chairman

By: J. M. DELLINGER
Member

By: **HARRY JERSIG**
Member

Witness our official hands and signatures this 13th day of February, A.D. 1968, as and constituting the Parks and Wildlife Commission of the State of Texas.

**LOUISIANA WILD LIFE AND
FISHERIES COMMISSION**

By: **LESLIE L. GLASGOW**
Director

Witness my official hand and signature this 14th day of December, A.D. 1967, as the Director of Louisiana Wild Life and Fisheries Commission for and on its behalf.

Exh. B to Cross Affidavit

WITNESSETH:

WHEREAS, the State of Louisiana by and through its Louisiana Wild Life & Fisheries Commission, a component agency of the State of Louisiana, is authorized to enter into a reciprocal agreement with the State of Texas under authority of LSA-R. S. 56:673 to establish sport fishing creel limits for Toledo Bend Lake, and

WHEREAS, by virtue of Article 978f-6, Texas Penal Code, the Texas Game and Fish Commission, now the Texas Parks and Wildlife Commission, may enter into agreements of reciprocity with the State of Louisiana to establish sport fishing creel limits for Toledo Bend Lake, and,

WHEREAS, the States of Louisiana and Texas intend to enter into such an agreement so that uni-

form regulations are established for Toledo Bend Lake.

NOW, THEREFORE, this reciprocal agreement for Toledo Bend Lake made and entered into in duplicate by and between the Louisiana Wild Life & Fisheries Commission, in behalf of the State of Louisiana, and the Texas Parks and Wildlife Commission, in behalf of the State of Texas, wherein it is mutually agreed as follows:

1. The creel limit for black bass (to include both the largemouth bass and spotted bass) shall be 15 per day, with no possession limits.

2. There shall be no creel or possession limits on catfish, white bass, crappie, sunfish or other species taken by sport fishing.

3. The Louisiana Wild Life & Fisheries Commission and the Texas Parks and Wildlife Commission are authorized to issue proclamations approving negotiations as entered into by this reciprocal agreement and such agreement shall become effective in Toledo Bend Lake thirty (30) days after the agreement has been lawfully accepted by both states.

4. Immediately after the adoption of this agreement a copy of the rules and regulations contained in the agreement will be filed in the office of the Secretary of State of Louisiana, the office of the Louisiana Wild Life & Fisheries Commission, the office of the Secretary of State of Texas, the office of the Texas Parks and Wildlife Commission, in the office of each county clerk and each county attorney in the counties within which Toledo Bend Lake is located in the State of Texas.

5. Either state to this agreement may withdraw

therefrom upon six (6) months notice in writing,
addressed to the other state.

**LOUISIANA WILD LIFE & FISHERIES
COMMISSION**

By: CLARK M. HOFFPAUER
Director

Witness my official hand and signature this 22nd
day of September, A.D. 1969, as the Director of
Louisiana Wild Life & Fisheries Commission for
and on its behalf.

**TEXAS PARKS AND WILDLIFE
COMMISSION**

By: PEARCE JOHNSON
Chairman

By: HARRY JERSIG
Member

By: J. M. DELLINGER
Member

Witness our official hands and signatures this 3rd
day of October, A.D. 1969, as and constituting the
Parks and Wildlife Commission of the State of Texas.

14. Affidavit of Jerry Sadler
Commissioner of the General Land Office of Texas

THE STATE OF TEXAS) KNOW ALL MEN
) BY THESE
COUNTY OF TRAVIS) PRESENTS:

That I, JERRY SADLER, being first duly sworn,
on my oath depose and say as follows:

Since January 1, 1961, I have held the position of Commissioner of the General Land Office of the State of Texas, and I am familiar with the facts set out below:

The official maps of the State of Texas, including those showing state boundaries and the boundaries of its counties, are kept in the General Land Office. The eastern boundary of the State was extended by an Act of November 24, 1849, so as to include "the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the 32° of north latitude," (3 Gammel's Laws of Texas 442), as specifically approved and consented to in advance by the Congress of the United States by an Act of July 5, 1848 (9 Stat. 245). In the same Boundary Act of November 24, 1849, the Texas Legislature extended the jurisdiction of each of the counties contiguous to the western half of the Sabine River, Lake and Pass to include those portions of the streams opposite each of said counties.

Since 1849, official maps prepared by the General Land Office of Texas reflecting state and county boundaries have consistently shown the eastern boundary of the state to be in the middle of the Sabine Pass, Sabine Lake and the Sabine River as far north as the 32° of north latitude, and the records of this office reflect that the State of Texas and its state agencies, including the General Land Office, have exercised jurisdiction and claimed ownership over the western half of said streams continuously since 1849. Since that date, county boundary maps of this office show the contiguous county boundaries to extend to the middle of said streams. An example of such maps is the relevant portion of the map of the General Land Office dated 1957, which is reproduced and attached hereto as Exhibit 1 to this Affidavit.

Among other exercises of state jurisdiction and ownership over such lands since 1849 have been improvements for navigation, impoundments for water supply, regulation of fishing and hunting on the western half of the aforesaid bodies of water, sale of sand, shell and gravel therefrom and leasing of the submerged land for production of oil, gas and other minerals. The latter leasing functions were exercised by the Commissioner of the General Land Office until 1939, when all such minerals beneath submerged lands were dedicated and conveyed to the Permanent School Fund and the School Land Board of Texas was created to administer the leasing of these and other lands belonging to the Permanent School Fund. (Art. 5421c-3, Vernon's Texas Civil Statutes). The Commissioner of the General Land Office serves as Chairman of the School Land Board and as custodian of its records.

At various times since directional and platform drilling made possible the exploration of submerged lands for mineral production, the State, acting through the Commissioner of the General Land Office and subsequently the School Land Board has advertised for lease and executed oil and gas leases on certain tracts within the western half of the Sabine River, Pass and Lake. These leases are awarded to the highest bidder in a sealed bid sale after public advertisement. A search of the records of this office reflect the following examples of leases advertised on lands within the western half of the Sabine River, Pass or Lake, with bids opened on the dates indicated:

1) *December 5, 1950.* Item 834 of 100 acres in the western half of Sabine River in Newton County was leased to the single bidder for \$6,105.00.

2) *December 5, 1950.* Items Nos. 836, 837 and 838, totaling 303 acres in the western half of Sabine River

in Orange County, were advertised for bids. Three bids were received and the tracts were leased to the high bidders for \$125,377.00.

3) *July 1, 1952.* Item No. 450 of 67 acres in Orange County in the western half of Sabine River was leased to the highest of three bidders for \$6,850.00.

4) *December 6, 1955.* Items Nos. 77, 78 and 79, totaling 2,585 acres in Jefferson County in the western half of Sabine Lake were advertised for bids. Four bids were received on two of the tracts totaling 1,725 acres and they were leased to the highest bidders for \$33,470.00.

5) *July 3, 1956.* Item 199 of 80 acres in the western half of the Sabine River in Newton County was leased to the single bidder for \$41,307.20.

6) *December 2, 1958.* 42 separate tracts in the western half of Sabine Lake (Items 218-59, inclusive) in Jefferson County ranging in size from 350 to 1,070 acres, and Item 5A of 40 acres on the west half of the Sabine River in Newton County, were advertised for bids. A total of 16,878 acres, and 5 year leases were made to the highest bidders for a total of \$1,106,815.26. The 40 acres in the west half of Sabine River in Newton County was leased to the highest bidder for \$3,000.00.

7) *December 1, 1959.* 18 separate tracts in the western half of Sabine Lake (Items 300-17, inclusive) in Jefferson County ranging in size from 380 to 970 acres, and Items 2, 6 and 7 of 90, 53 and 40 acres, respectively, in the western half of Sabine River in Newton County were advertised for bids. A total of 33 bids were received on all 18 Sabine Lake tracts, totaling 12,835 acres, which were leased to the highest bidders for a total of \$1,252,358.80. No bids were received on Items

2 and 7. The 53 acres of Sabine River land in Item 6 in Newton County was leased to the highest bidder for \$2,650.00.

8) *December 6, 1960.* Item 5B, a 50 acre tract in the western half of the Sabine River in Newton County, was advertised for bids. No bids were received on this tract.

9) *August 1, 1961.* Items 5B and 7 of 50 acres and 110 acres, respectively, in the western half of the Sabine River in Newton County were advertised for bids. Item 7 was withdrawn and the 50 acres of Tract 5B was leased to the high bidder for \$2,500.00.

10) *May 5, 1964.* 25 separate tracts in the western half of Sabine Lake (Items 327-51, inclusive) in Jefferson County ranging in size from 333.24 to 1,694 acres were advertised for bids. Five bids were received on 5 tracts totaling 3,285.24 acres, and 5 year leases thereon were executed to the highest bidders for a total of \$77,243.00.

11) *October 6, 1964.* Item 1 of 85 acres in the western half of Sabine River in Orange County was leased to the highest bidder for \$2,893.90.

12) *June 1, 1965.* Two separate tracts in the western half of Sabine Lake (Items 269-70) in Jefferson County for 903 and 1,040 acres, respectively, were advertised for bids. No bids were received on these tracts.

13) *February 1, 1966.* Three separate tracts in the western half of Sabine Lake (Items 329-31, inclusive) in Jefferson County for 903, 1,040 and 930 acres, respectively, and 2 tracts in the western half of Sabine Pass (Items 332-3) in Jefferson County of 420 and 590 acres were advertised for bids. No bids were received on any of these tracts.

14) *April 4, 1967.* Items 7 and 8 of 40 acres each in the western half of Sabine River in Newton County were advertised for bids. No bids were received on these tracts.

15) *December 3, 1968.* Item 2A of 35 acres in the western half of the Sabine River in Newton County and Item 1 of 85 acres in the western half of the Sabine in Orange County, were advertised for bids. No bids were received on the Orange County tract. The Newton County tract was leased to the highest bidder for \$7,000.00.

16) *July 1, 1969.* Item 3 of 135 acres in the western half of the Sabine River in Newton County was advertised for bids. No bids were received on this tract.

The State and its Permanent School Fund have received royalties from oil and gas production on four of the above mentioned tracts, and same are still producing or are pooled with producing drilling units.

By letter of January 31, 1966, Jack P. F. Gremillion, Attorney General of Louisiana, protested the above mentioned advertised lease sale of February 1, 1966, and notified prospective lessees of this date that he, on behalf of Louisiana, was claiming title to the western half of Sabine River, Sabine Pass and Sabine Lake. A copy of that letter is attached hereto as Exhibit 2 to this affidavit. As above indicated, Texas received no bids on the advertised tracts in this sale and has been able to lease only one tract in the western half of Sabine River since that date.

The unfounded claim and unwarranted protest asserted by the Attorney General of Louisiana in 1966, and persisted in since that date, has harassed the State of Texas and its prospective lessees and has obstructed leasing and development of minerals in that portion

of the Sabine River, Pass and Lake within the boundary duly established in 1849 by consent of the Congress of the United States. In the meantime, the State of Louisiana continues to execute leases within its half of the Sabine streams and to encourage the drilling and production of oil and gas wells which are draining or will drain minerals from beneath the Texas owned western half of said streams. These actions by Louisiana in retarding leasing and development beneath the Texas half of the boundary streams while encouraging leasing the production on its eastern half of said boundary streams, has damaged and will continue to damage the State of Texas and its Permanent School Fund until Louisiana is restrained from interfering with the leasing and development by the State of Texas of the western half of the Sabine streams.

Witness my hand this 9th day of June, 1970.

s/ Jerry Sadler
JERRY SADLER

Sworn to and subscribed before me, the undersigned authority, by Jerry Sadler, Commissioner of the General Land Office and Chairman of the School Land Board of the State of Texas, on this the 9th day of June, 1970, to certify which witness my hand and seal of office.

s/ Helen Ingram
Notary Public in and for
Travis County, Texas

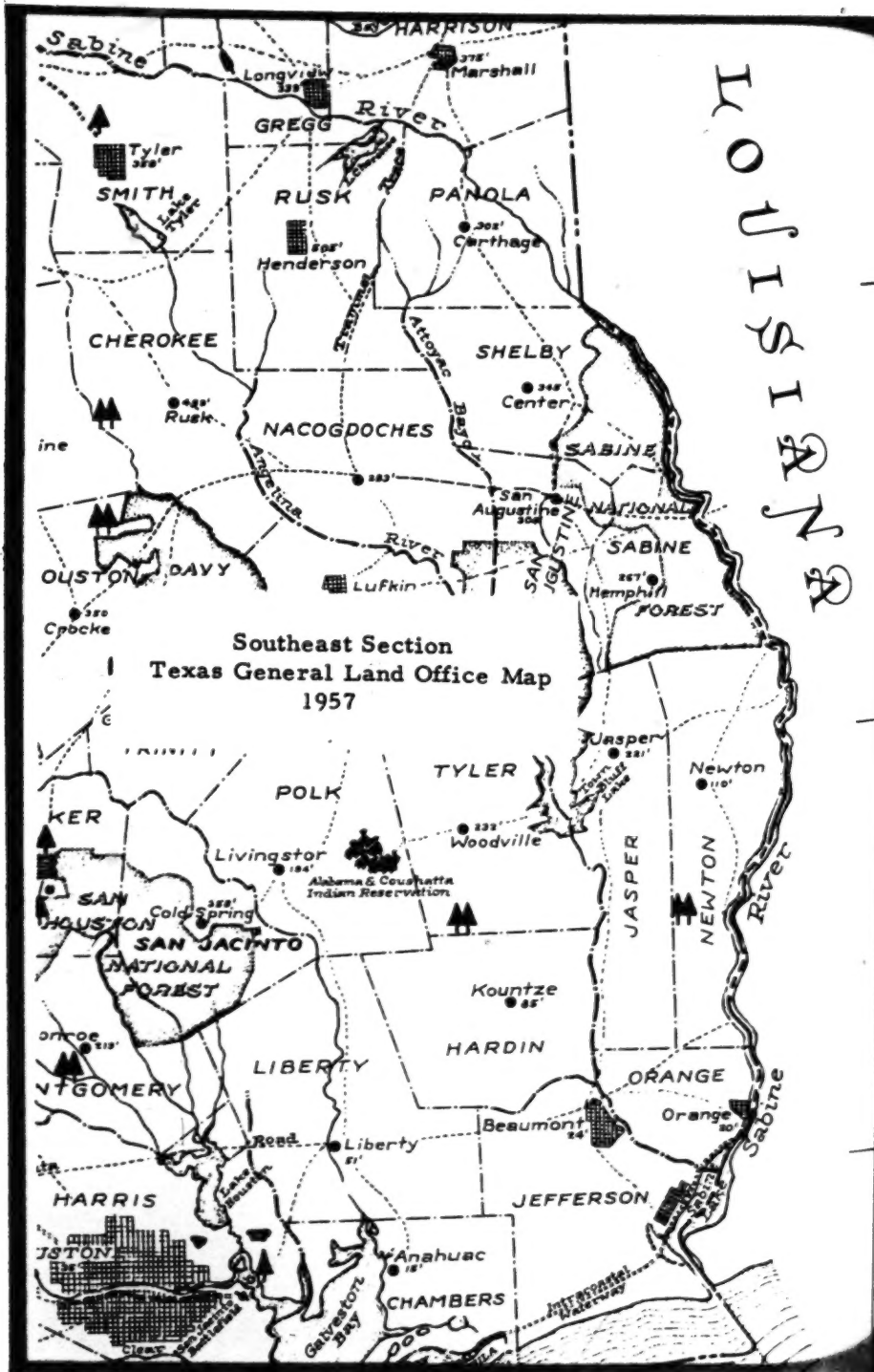


EXHIBIT 2

State of Louisiana
DEPARTMENT OF JUSTICE
Baton Rouge

January 31, 1966

Honorable Jerry Sadler
Commissioner
General Land Office
State of Texas
Austin, Texas

Dear Mr. Sadler:

I have before me a document issued by you in your official capacity in conformity with an order of the School Land Board of Texas giving notice for bids to be received not later than 10 A.M., February 1, 1966, for oil, gas and mineral leases covering certain tracts that are described in the notice for bids.

Among the tracts included in the notice for bids are the following:

SABINE LAKE

Jefferson County

329.	Tract 41	903 Acres
330.	Tract 42	1040 Acres
331.	Tract 43	930 Acres

SABINE PASS

Jefferson County

332.	Tract 1	420 Acres Approximately
333.	Tract 2	590 Acres Approximately

GULF OF MEXICO

Jefferson County

401.	Tract 13-L	1283.1 Acres
402.	Tract 13-L NW/4	1440 Acres

According to the territorial claim of the State of Louisiana of lands lying within the boundaries of said state and to it belonging, are all of the tracts, either in whole or in part, that are identified above and described in your notice for bids. In the exercise of my official duties and mandate as set forth in Article VII, Section 56 of the Constitution of the State of Louisiana, I hereby enter serious protest on behalf of the State of Louisiana against your offering for lease and leasing, on behalf of the State of Texas and the School Land Board of that state, any of the tracts above identified and included in the notice for bids aforesaid.

You are fully informed as to the claims of the State of Louisiana to submerged land areas in Sabine River, Sabine Lake, Sabine Pass, and the area of said lands extending seaward from said pass. Even if the State of Texas, represented by its officers and agents, does not accept and agree to such claim and the extent thereof, it seems only reasonable to suggest that the State of Texas not offer for lease any lands lying within the area or areas of submerged lands affected by disputed claims of the two states, until the boundary dispute is resolved by compact or litigation.

Sincerely yours,

s/ Jack P. F. Gremillion
JACK P. F. GREMILLION
Attorney General
State of Louisiana

cc: Honorable John Connally
Governor of Texas

Honorable Waggoner Carr
Attorney General of Texas

Honorable John J. McKeithen
Governor of Louisiana

Honorable Ellen Bryan Moore
Register of State Land Office
State of Louisiana

Honorable Henry D. Howe, Chairman
Louisiana State Mineral Board

Honorable Howard M. Jones
State Senator, Louisiana

Honorable Lloyd R. Hymel
State Representative, Louisiana

**15. Affidavit of J. C. Dingwall, Texas State Highway
Engineer**

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

Before me, the undersigned notary public in and for Travis County, Texas, on this day personally appeared J. C. Dingwall, who being by me duly sworn, upon oath says:

My name is J. C. Dingwall, and I am State Highway Engineer for the State of Texas, having been with the State Highway Department for 38 years. I have personal knowledge of the facts and records of this Department relating to construction of bridges by the State of Texas and the State of Louisiana across the Sabine River. All of the bridges on the State Highway Department System across the Sabine River between Logansport, Louisiana (near the 32nd degree of north latitude), and the Gulf of Mexico were constructed with the State of Texas and the State of Louisiana each paying fifty percent (50%) of cost, except for

Federal contributions, and except for the present crossing of Toledo Bend Reservoir on Texas State Highway 21 (Louisiana State Highway 6), which was paid for by the Sabine River Authorities of Texas and Louisiana as a replacement crossing necessitated by the reservoir construction.

A list of such bridges, the Texas counties crossed, highway numbers, and dates of construction is attached hereto and made a part hereof.

Signed the 15 day of June, 1970.

s/ J. C. Dingwall
J. C. DINGWALL
State Highway Engineer

THE STATE OF TEXAS)
)
COUNTY OF TRAVIS)

Subscribed and sworn to before me the undersigned authority on this 15 day of June, 1970.

s/ Beatrice O. Fox
BEATRICE O. FOX
Notary Public in and for
Travis County, Texas

**BRIDGES CONSTRUCTED ACROSS THE SABINE RIVER
BETWEEN THE STATES OF TEXAS AND LOUISIANA**

TEXAS COUNTY	HIGHWAY NUMBER	PROJECT NUMBER	CONTROL NUMBER	DATE CONTRACTED	DATE COMPLETED
Shelby	U.S. 84	NRH 792(Tex.) NRM 792(La.)	175-1-1	11/35	12/36
Sabine	S.H. 21	WPH 862	119-5-1	6/36	8/37
Sabine	S.H. 21	C-119-5-3	(Toledo Bend Reservoir)	12/65	5/68
Newton	F.M. 692	None	1300-2 (Over Toledo Bend Dam)		
Newton	S.H. 63	WPH 833	214-4-1	6/36	7/37
Newton	U.S. 190	FAP 567 I	244-6-1	1/30	4/31
Newton	S.H. 12	WPSS 822	499-1-1	6/36	2/38
Orange	U.S. 90 (Old Loc.) I.H. 10	FAP 336 A-B I FI 1091(1)	28-12-1 (Removed 28-14-1)	4/26 4/54 6/49	11/27 8/54) 1/51



FILE COPY

No. 36, ORIGINAL

Supreme Court, U.S.

FILED

AUG 3 1970

E. ROBERT SEAYER, CL

**In the
Supreme Court of the United States**

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**AMENDED ANSWER AND COUNTERCLAIMS
OF THE STATE OF LOUISIANA**

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

EDWARD M. CARMOUCHE,
Assistant Attorney General.

OLIVER P. STOCKWELL,

SAM H. JONES,

JACOB H. MORRISON,
Special Assistant Attorneys General,
State of Louisiana.

No. 36, ORIGINAL

**In the
Supreme Court of the United States**

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**AMENDED ANSWER AND COUNTERCLAIMS
OF THE STATE OF LOUISIANA**

The State of Louisiana, herein appearing through its Attorney General and as authorized by the Special Master on July 8, 1970, files this amended answer and counterclaims against the State of Texas, and avers:

FOURTH DEFENSE

The Fourth Defense in the original answer filed by the State of Louisiana is amended as follows:

In lieu of the answer of the State of Louisiana to Article II of the complaint, the answer to Article II of the complaint is amended to read as follows:

"2.

In answer to Article II the State of Louisiana admits that the United States Congress approved an Act of July 5, 1848 (9 Stat. 245), which Act is the best evidence of its contents and provisions, but denies that the Statute had the effect of transferring title from the State of Louisiana to the State of Texas to the western half of the river bed and sub-soil of Sabine River (including Sabine Pass and Sabine Lake) from the Gulf of Mexico to the 32d degree of north latitude.

In the alternative, if the Court should determine that the Act purported to transfer title, then the Act is unconstitutional under the Constitution of the United States and particularly under Article IV, Section 3 of said Constitution.

Further answering said Article the State of Louisiana admits that the Legislature of the State of Texas passed an Act approved November 24, 1849 (3 Gammel's Laws of Texas 442), which Act is the best evidence of its contents and provisions, but the State of Louisiana denies that the Act had the effect of transferring from the State of Louisiana to the State of Texas title to the west half of the river bed and subsoil of Sabine River (including Sabine Pass and Sabine Lake) from the Gulf of Mexico to the 32d degree of north latitude.

In the alternative, if the Court should determine that the Act purported to transfer title, then

the Act is unconstitutional under the Constitution of the United States and particularly under Article IV, Section 3 of said Constitution."

II.

In lieu of the answer of the State of Louisiana to Article VII B of the complaint, the answer to Article VII B of the complaint is amended to read as follows:

"7B.

In answer to subparagraph B the State of Louisiana admits the existence of Senate Document, 30th Congress, 1st Session 1848, Miscellaneous No. 135, which purports to be a copy of Resolution 212 of the Legislature of the State of Louisiana for the year 1848, but the State of Louisiana denies that said Document 135 is a true copy of Resolution 212, in that Resolution 212 provides:

"Between the middle of the Sabine river and the western bank thereof, to begin at the mouth of said river where it empties into the Gulf of Mexico, and thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, *it being the boundary line between the said State of Louisiana and the State of Texas.*" (Emphasis ours), and that Miscellaneous Document 135 leaves out the word "Texas" at the end of the above paragraph.

The State of Louisiana denies that Resolution 212 gave up any rights of the State of Louisiana, but on

the contrary confirmed the western boundary of the State of Louisiana along the west bank of the Sabine River as fixed by the Treaty of Limits.

III.

That the original answer, as amended, is adopted and re-urged herein.

SIXTH DEFENSE

COUNTERCLAIM NO. 1

1.

The State of Louisiana, for the reasons set forth in its original answer, as amended hereby, avers that the boundary between the State of Texas and the State of Louisiana from the Gulf of Mexico to the 33rd degree of north latitude was settled in the Treaty of Limits between the United States (as a sovereign nation appearing on behalf of the State of Louisiana) and Spain in 1819, which boundary was confirmed on January 12, 1828 in a Treaty between the United Mexican States and the United States, and on April 25, 1838, reaffirmed in a Treaty between the Republic of Texas and the United States. The boundary was thereafter surveyed and staked by a Joint Commission appointed by the Republic of Texas and the United States from the Gulf of Mexico along the west bank of Sabine Pass, Sabine Lake and Sabine River to the 32d degree of north latitude, and then north to the 33rd degree of north latitude (Senate Document 199, 27th Congress, 2d Session, 1842).

2.

That the State of Louisiana, from the adoption of the Treaty of Limits of 1819, has recognized and asserts its west boundary as that established in said Treaties from the Gulf of Mexico to the 33rd degree of north latitude and extending from said point on the Gulf of Mexico south into the Gulf of Mexico to the extent of the rights acquired by the State of Louisiana under the Submerged Lands Act.

3.

The State of Texas stipulated in these proceedings that its eastern boundary "between the 32nd and 33rd degrees of north latitude is a line marked on the ground in 1840-1841 by Commissioners appointed by the United States and the Republic of Texas from the junction of the west bank of the Sabine River with the 32nd degree of north latitude, thence north to the 33rd degree of north latitude, being the same line fixed by the Treaties between the United States and Spain in 1819, between the United States and Mexico in 1828, and between the United States and the Republic of Texas in 1838", and that this line has remained the same since it was so marked on the ground. This leaves in dispute with the State of Texas only that portion of the boundary from the Gulf of Mexico to the 32d degree of north latitude (other than the boundary in the Gulf of Mexico which is not involved in this litigation). The State of Louisiana, therefore, urges this Court to recognize and declare its boundary between the State of Texas to be that line marked and

staked on the ground by the said Commission in 1840-1841 from the Gulf of Mexico along the west side of Sabine Pass, Sabine Lake and Sabine River to where it strikes the 32d degree of north latitude and joins the line already admitted by the State of Texas as being its eastern boundary.

COUNTERCLAIM NO. 2

In the alternative, should this Court decide against the State of Louisiana under Counterclaim No. 1, then the State of Louisiana claims ownership of the bed and subsoil from the middle of Sabine River, Sabine Lake and Sabine Pass to the west bank thereof as established by the Treaty of Limits and actually surveyed and staked as set forth in paragraph 1 of Counterclaim No. 1 for the following reasons:

(a) That when the Treaty of Limits was entered into in 1819 fixing the western boundary along the west bank of the Sabine River, there was no United States territory west of said boundary and, therefore, the bed and subsoil of the west half of the Sabine Pass, Sabine Lake and Sabine River vested in the State of Louisiana subject to the right of other nationals to use the River in accordance with the Treaty.

(b) That the State of Louisiana asserted this right of ownership in Resolution 212 of the Legislature of the State of Louisiana of 1848.

(c) That the fact that the State of Louisiana was to acquire all islands in said body of water indicated that the State of Louisiana was to have title to the bed

and subsoil of Sabine Pass, Sabine Lake and Sabine River to the west bank as established by said treaty.

(d) That the State of Louisiana was to encompass the Orleans Territory, which boundary was to be settled by the United States, which was settled by the Treaty of Limits in 1819.

COUNTERCLAIM NO. 3

In the alternative, should the Court decide against the State of Louisiana under Counterclaims Nos. 1 and 2, then Louisiana claims that the boundary between the State of Louisiana and the State of Texas is in the middle of the Sabine River, under accepted international law, from the Gulf of Mexico to the 32d degree of north latitude, including title not only to the islands in existence in 1812, which is admitted, but all other islands formed from that date in said bodies of water.

WHEREFORE, the State of Louisiana prays that its plea of accord and satisfaction be sustained and that the State of Texas' claims be denied at its costs.

PRAYS FURTHER, in the alternative, that if its plea of accord and satisfaction is denied, that it have judgment under Counterclaim No. 1 declaring the boundary between the State of Texas and the State of Louisiana is that line marked and staked on the ground by the Commission in 1840-1841 from the Gulf of Mexico along the west side of Sabine Pass, Sabine Lake and Sabine River to where it strikes the 32d degree of north latitude and joins the line already

admitted by the State of Texas as being its eastern boundary.

PRAYS FURTHER, in the alternative, that if the Court should reject the plea of accord and satisfaction and the claim under Counterclaim No. 1, that the State of Louisiana be decreed as having title to the bed and subsoil of the west half of Sabine Pass, Sabine Lake and Sabine River to the west bank thereof as established by the Treaty of Limits from the Gulf of Mexico to the 32d degree of north latitude.

PRAYS FURTHER, in the alternative, that if the foregoing claims be denied by the Court, that the State of Louisiana have judgment fixing the boundary between the State of Louisiana and State of Texas in the middle of Sabine River, under accepted international law, from the Gulf of Mexico to the 32d degree of north latitude, with title to all islands in existence in 1812, and all other islands formed from that date in said bodies of water.

PRAYS FURTHER, for all orders and decrees necessary in the premises; for full, general and equitable relief.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

EDWARD M. CARMOUCHE,
Assistant Attorney General.

OLIVER P. STOCKWELL,
SAM H. JONES,

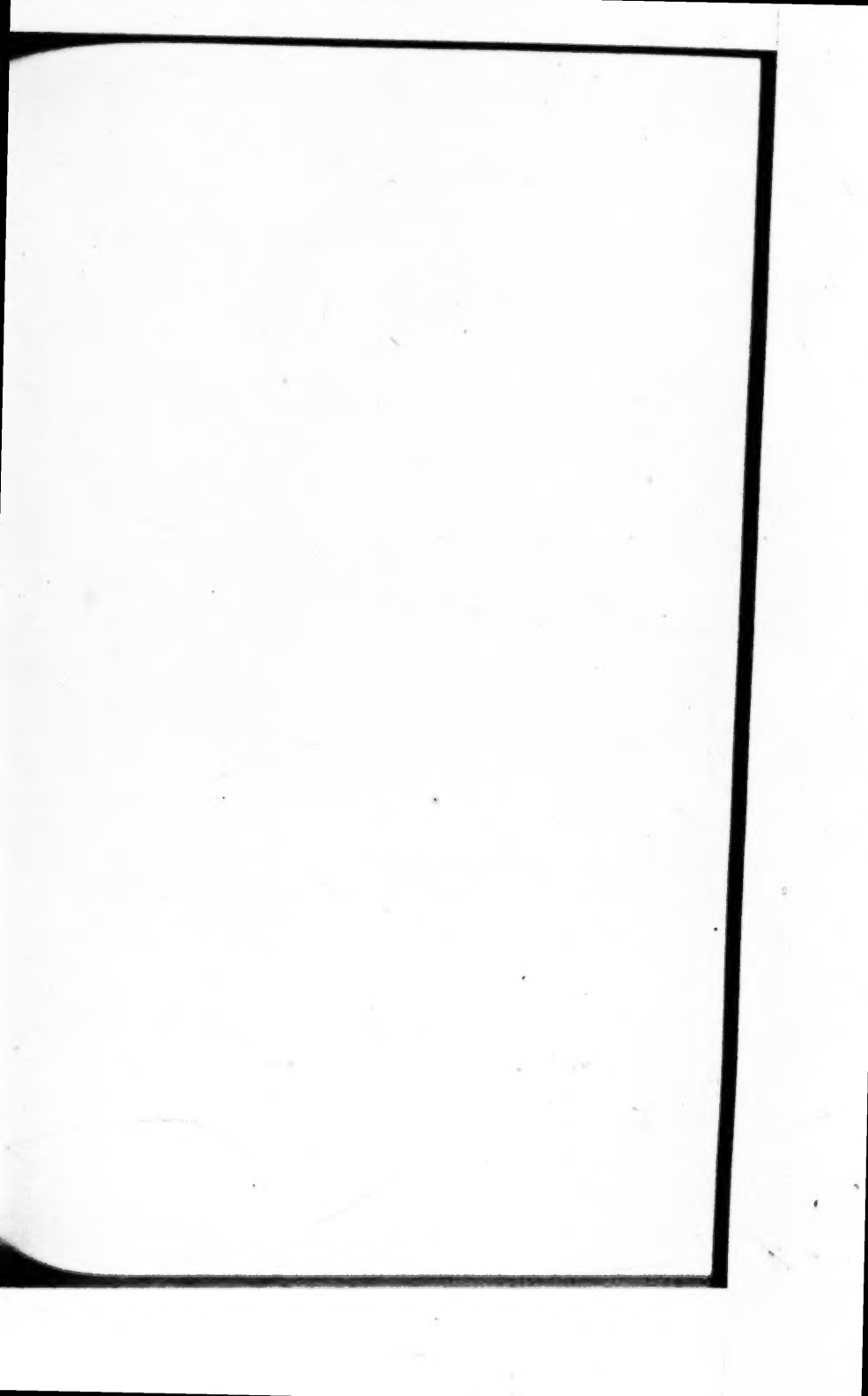
JACOB H. MORRISON,
Special Assistant Attorneys General,
State of Louisiana.

CERTIFICATE OF SERVICE

I, JACK P. F. GREMILLION, Attorney General of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1970, I served copies of the foregoing amended answer and counterclaims of the State of Louisiana, by transmitting conformed copies of the same, by first class mail, postage prepaid, to the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas; also, upon the Solicitor General of the United States, in compliance with Rule 33.2(b) of the Rules of the Supreme Court of the United States.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

B-2672, 7-70



EX COPY

No. 36, ORIGINAL

FILED
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E. ROBERT SEAVER, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff

v.

THE STATE OF LOUISIANA,

Defendant

BEFORE THE HONORABLE
ROBERT VAN PELT, SPECIAL MASTER

**ANSWER OF THE STATE OF TEXAS
TO COUNTERCLAIMS OF THE
STATE OF LOUISIANA**

CRAWFORD C. MARTIN
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**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1969

No. 36, Original

THE STATE OF TEXAS,

Plaintiff

v.

THE STATE OF LOUISIANA,

Defendant

**ANSWER OF THE STATE OF TEXAS
TO COUNTERCLAIMS OF THE
STATE OF LOUISIANA**

The State of Texas, by its Attorney General, in answer to the Counterclaims filed herein by the State of Louisiana, respectfully replies and avers:

I.

ANSWER TO COUNTERCLAIM NO. 1

In answer to paragraph 1 of Counterclaim No. 1, the State of Texas denies that the United States was appearing on behalf of the State of Louisiana when it entered into treaties with other Nations fixing the western limits of the territory of the United States along the west bank of the Sabine River from the Gulf of Mexico to the 32nd degree of north latitude

and thence due north to the 33rd degree of north latitude. As shown by the Treaty with Spain in 1819, the Treaty with Mexico in 1828, the Treaty with the Republic of Texas in 1838, and the Joint Boundary Commission Survey and Report (1840-1841), the United States was acting for itself as a sovereign Nation with respect to its own territory. Long prior to these treaties and surveys, the United States had exclusive jurisdiction over and ownership of the western half of Sabine Pass, Sabine River and Sabine Lake, all of which portion of said streams were outside of and west of the western boundary of the State of Louisiana. The treaties merely confirmed the jurisdiction and title of the United States and limited the westward extent of the Nation's territorial claims under the Louisiana Purchase of 1803.

The western boundary of the State of Louisiana along the geographic middle of the Sabine River as fixed by the Congress of the United States in 1811 and by the Constitution of the State of Louisiana in 1812 was not in any manner changed or altered by the aforesaid international agreement between the United States and other nations. Neither has such boundary ever been changed, moved westward or otherwise altered by joint action of the Congress and the State of Louisiana as is required by the Constitution of the United States in order for a state boundary to be fixed or changed.

The exclusive jurisdiction of the United States over and title to the western half of the Sabine, subject to common use of the waters for navigation, continued from 1812 until 1849, when, with the specific authorization of Congress (9 Stat. 245), the State

of Texas extended its eastern boundary "so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the 32nd degree of north latitude . . ." (3 Gammel's Laws of Texas 442).

In answer to numbered paragraph 2 of Counterclaim No. 1, the State of Texas denies that the State of Louisiana since 1819 has recognized and asserted its west boundary from the Gulf to the 32nd degree of north latitude to be the west bank of Sabine River. On the contrary, by Resolution 212 of the Legislature of the State of Louisiana in 1848, that State specifically recognized the western half of Sabine River to be part of the territory of the United States over which ". . . the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend . . . and that it is of importance . . . that the jurisdiction of some State should be extended over said territory. . ." For more than 90 years after Congress permitted Texas to extend its boundary to include such territory, the State of Louisiana, acting through its Legislature, its Supreme Court, its Attorney General and its public agencies, recognized that the western half of Sabine River (including Sabine Pass and Sabine Lake) were within the boundaries of the State of Texas and acquiesced in the continuous jurisdiction and ownership exercised by the State of Texas during such time and even until the present controversy arose.

In answer to numbered paragraph 3 of Counterclaim No. 1, the State of Texas admits that it has stipulated that its eastern boundary between the 32nd

and 33rd degrees of north latitude is a line marked on the ground in 1840-1841 by Commissioners appointed by the United States and the Republic of Texas from the junction of the west bank of the Sabine River with the 32nd degree of north latitude, thence north to the 33rd degree of north latitude, the same being that portion of the eastern boundary of Texas which lies north of the 32nd degree of north latitude. That particular portion of the eastern boundary of Texas remained as marked on the ground by the United States and the Republic of Texas, because Congress has not authorized Texas to extend that portion of its boundary eastward to the original western boundary of the State of Louisiana as it did with respect to the Sabine River portion of said boundary.

Whether Congress ever authorized Louisiana to make a westward extension of that portion of its western boundary lying north of the 32nd degree of north latitude so as to coincide with the eastern boundary of Texas is not an issue in this case. Whatever may be the rights of the State of Louisiana to land west of that portion of its original boundary lying north of the 32nd degree of north latitude (a narrow strip lying between parallel lines, one drawn due north from the middle of the Sabine and the other drawn due north from the west bank of the Sabine) is a matter entirely between the State of Louisiana and the United States. The strip is not claimed by the State of Texas; is not involved in this lawsuit; and has no bearing on this controversy.

ANSWER TO COUNTERCLAIM NO. 2

The State of Texas denies that Louisiana acquired

any ownership of the bed and subsoil of the western half of Sabine River by reason of the aforesaid treaties and surveys made between the United States and Spain, Mexico, and the Republic of Texas, because the property, being outside of and west of the western boundary of the State of Louisiana, was owned by the United States until Congress authorized Texas to include the area within its boundaries in 1848. Answering Defendant's subparagraphs in the order lettered under Counterclaim No. 2, Plaintiff respectfully avers:

(a) That after the 1819 Treaty of Limits between the United States and Spain was finally ratified and proclaimed on February 22, 1821, the United States gave up its claim to the territory west of the Sabine known as the Province of Texas, but between 1819 and 1835 the United States continuously engaged in negotiations with Spain and Mexico in an attempt to repurchase the area. By temporarily limiting its territory to the west bank of the Sabine, the United States did not lose or forfeit its title to the bed and subsoil of the western half of Sabine River, Lake and Pass to the State of Louisiana.

(b) Plaintiff denies that the State of Louisiana asserted any right to ownership of the bed and subsoil of the Sabine River by Resolution 212 of the State Legislature in 1848. On the contrary, this Resolution recognizes that the western half of the Sabine was owned by the United States in 1848 and that the State of Louisiana had no jurisdiction thereover.

(c) Plaintiff denies that the State of Louisiana acquired all islands in the Sabine, admitting only that Louisiana's western boundary included all islands

in the eastern half of the Sabine River, Lake and Pass. Inclusion of these islands had no effect upon the ownership of the bed and subsoil of the western half of the Sabine.

(d) Plaintiff denies that the State of Louisiana was to encompass all of the Orleans Territory. The Enabling Act of 1811, the Louisiana Constitution of 1812, and the Act of Admission of 1812 clearly provide for the boundaries of the State of Louisiana to include only "that part of the territory or country ceded under the name of Louisiana. . . contained within the following limits: beginning at the mouth of the river Sabine, thence by a line drawn along the middle of said river, including all islands to the thirty-second degree of latitude. . . ," which line specifically limited its western boundary. Section 3 of the Act of Admission (2 Stat. 701) recites that after creation of the State there is a "residue of that portion of country which was comprehended within the territory of Orleans," and that the State and the residue of the territory shall comprise one judicial district.

ANSWER TO COUNTERCLAIM NO. 3

Plaintiff denies that the location of the "line to be drawn along the middle" of Sabine River as the western boundary of Louisiana and eastern boundary of Texas is to be determined "under accepted international law," because this boundary was fixed in the geographic middle of the Sabine by the United States Congress and the constitutional and legislative acts of the respective States. The domestic law of the United States having been employed, it cannot be superseded by international law.

If Defendant means this Counterclaim as an assertion that the boundary is located other than in the geographic middle of Sabine River, Sabine Lake and Sabine Pass, Plaintiff denies such allegation and asserts that the geographic middle, as distinguished from the middle of a main channel of navigation (the Thalweg), was intended and provided for by the Congress and the Constitution of Louisiana. This intent and meaning was confirmed by the subsequent Act of Congress permitting Texas to "include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River. . .," and by the Senate Judiciary Committee Report on said Act (9 Stat. 245) which stated:

"The boundary of the State of Louisiana extended to the middle of the Sabine; so that half of the river and lake, to the western shore, belonged to the United States, and was not included in the State of Louisiana . . ."

The Thalweg rule is wholly inapplicable to the Sabine boundary because:

1. The United States, as common source proprietor, and the adjacent States provided for a geographic middle line.
2. The whole basis for the Thalweg rule (to provide equal opportunity for use of the main channel of navigation) is absent in this case, because free and common use of the entire river for navigation was reserved "as well to the inhabitants of said state as to the inhabitants of other states and the territories of the United States" in the Louisiana Act of Admission (2 Stat. 701) and by a similar provision in the Treaty of 1819 with Spain.

3. There was no well defined or habitually used main channel of navigation in Sabine Pass, Sabine Lake or Sabine River in 1812 or thereafter until man-made channels were dredged.

That the geographic middle was intended and provided in the Sabine River, Pass and Lake has been the consistent interpretation of the United States through the Congress and all Federal agencies mapping, improving, using and otherwise dealing with the Sabine and structures thereon since 1812. This interpretation was acquiesced in and followed by the State of Louisiana and its public agencies for more than 100 years.

Since 1849, the State of Texas has exercised State jurisdiction and has possessed and asserted ownership of the western half of said streams and the bed and subsoil thereof, from the geographic middle to the western shores and banks, subject only to the common use of the waters for navigation, which was reserved equally to the inhabitants of both States. For at least 100 years the State of Louisiana acquiesced in such exercise of jurisdiction and ownership by the State of Texas eastward to the geographic middle of said streams, including specific acts of recognition and acquiescence by the Legislature, the Supreme Court and the Attorney General of Louisiana. By reason of such prescription on the part of Texas and acquiescence on the part of Louisiana, the geographic middle of the Sabine streams is the common boundary between the two States, and Louisiana is estopped from claiming otherwise.

Texas admits that Louisiana has title to all islands which existed in the eastern half of the Sabine River

in 1812 and those which may have been formed within the eastern half thereof since 1812. Texas denies that Louisiana has title to any islands within the western half of Sabine River, Sabine Pass or Sabine Lake.

**COUNTERCLAIMS RAISE NO MATERIAL
ISSUES OF FACT AND ARE INVALID
AS A MATTER OF LAW**

Plaintiff further asserts that the Counterclaims fail to present any material issue of fact and are invalid as a matter of law. They are asserted as a "Sixth Defense" to Plaintiff's Complaint and relate to the same questions of law heretofore raised by the pleadings, none of which require evidence other than the undisputed facts of which the Court and the Special Master may take judicial notice or ascertain through the pending summary judgment proceeding. These questions of law are covered by Plaintiff's Motion for Summary Judgment, and Plaintiff renews its Motion with respect thereto.

Wherefore, Plaintiff prays that the Counterclaims be denied and that Plaintiff have judgment as prayed for as a matter of law.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney
General of Texas

HOUGHTON BROWNLEE, JR.

J. ARTHUR SANDLIN

JAMES H. QUICK
Assistant Attorneys General
of Texas

PRICE DANIEL
Special Assistant Attorney
General of Texas

CERTIFICATE

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the — day of August, 1970, I served copies of the foregoing Answer to Counterclaims of the State of Louisiana, by first class mail, postage prepaid, to the office of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas

FILE COPY

No. 36 ORIGINAL

Supreme Court, U.S.
FILED

NOV 12 1970

E. ROBERT SEEVER, CLERK

**In the
Supreme Court of the United States**

(OCTOBER TERM, 1970)

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**Before the Honorable
Robert Van Pelt, Special Master**

**REPLY BRIEF BY LOUISIANA TO THE BRIEF
OF THE STATE OF TEXAS IN SUPPORT OF
ITS MOTION FOR JUDGMENT**

**JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.**

**JOHN L. MADDEN,
Assistant Attorney General.**

**EDWARD M. CARMOUCHE,
Assistant Attorney General.**

**OLIVER P. STOCKWELL,
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**SAM H. JONES,
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No. 36 ORIGINAL

**In the
Supreme Court of the United States
(OCTOBER TERM, 1970)**

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**Before the Honorable
Robert Van Pelt, Special Master**

**REPLY BRIEF BY LOUISIANA TO THE BRIEF
OF THE STATE OF TEXAS IN SUPPORT OF
ITS MOTION FOR JUDGMENT**

INTRODUCTORY STATEMENT

The Texas legal staff is to be congratulated for the thoroughness and excellence of their brief in support of their State's motion for judgment. We do believe, in all modesty, that we have adequate answers to their arguments and authorities; and we will proceed, through the medium of this brief, to expound Louisiana's position which is based on solid legal principles.

Louisiana's legal posture appears from the three pleadings filed by it, in the order in which they were filed, labeled respectively: A. Opposition of the State of Louisiana to the filing of the Complaint by Texas;

B. Motions and Answer of the State of Louisiana to Complaint by State of Texas; and C. Amended Answer and Counter-claims of the State of Louisiana.

BASIC ELEMENTS OF LOUISIANA'S DEFENSE

These pleadings assert Louisiana's basic contentions that:

1. Absence of a justiciable controversy due to a veritable "accord and satisfaction" based on the previously (1840-'41) staked and located "treaty boundary" (Senate Document 199, 27th Congress, 2d Session, 1842).
2. The want of Louisiana's consent (under U.S. Constitution, Art. 4, Sec. 3) to the purported "consent" by Congress, (Act of July 5, 1848, Ch. 94, 30th Congress, 9 Stat. 245), to the "extension" by Texas of her eastern boundary to the middle of the Sabine.
3. The "extension" of Texas' eastern boundary to the Sabine's middle did not amount to a conveyance of *title* to the western half of that river, but was designed only to extend her criminal jurisdiction. (Louisiana Resolution 212 of March 16, 1848; Report of Senate Judiciary Committee of June 29, 1848).
4. To interpret Congress' permission for the extension and Texas' acceptance thereof as a titular conveyance would render both unconstitutional, as violative of Art. 4, Sec. 3, U.S. Constitution, *Louisiana v. Mississippi*, 202 U.S. 1, 26 S.Ct. 408, 50 L. Ed. 913 (1906).
5. The doctrine of "acquiescence" by Louisiana in the mid-river location of the boundary can-

not possibly apply to a waterway where the treaties' recognition of navigation rights, available to both parties negates any semblance of adverse use or possession. In any event, adequate proof of acquiescence or prescription does not exist; hence there does exist a serious evidentiary conflict on this alone sufficient to defeat a summary judgment.¹

SUBSTANTIVE QUESTIONS TO BE DECIDED BY THE MASTER

The fundamental substantive points for determination fit into two basic categories, one essentially legal and the other both legal and factual. They are:

- I. In the light of the treaties, laws and statutes involved, (a) was Louisiana the beneficiary of the establishment on the Sabine's *west* bank by the treaties of 1819, 1828 and 1836 of the boundary between the territory of the United States and that, respectively, of Spain, Mexico and the Republic of Texas? (b) was there an "accord and satisfaction" based on a staked and located boundary? and (c) could the U. S. legally "give" Texas both jurisdiction and *title* to a 150-foot strip of water at Louisiana's expense?
- II. Has there been any proven acquiescence on the part of Louisiana in the assertion-by-acts on the part of Texas of dominion over the western half of the Sabine water system?

¹ (Wherever the term "Sabine" is used, unless otherwise specified, it includes the Sabine River, Sabine Lake and Sabine Pass).

HISTORICAL BACKGROUND ESTABLISHING LOUISIANA'S WESTERN BOUNDARY AND THE EXISTENCE OF AN "ACCORD AND SATISFACTION" ON WHICH SHE RELIES

We regret that there is no short cut to a proper consideration of Point I. A detailed analysis of the admitted historical facts is unavoidable, though we regret to tax the patience of the Special Master with a historical dissertation.

As briefly outlined in Louisiana's first pleading (its opposition, p. 7) the original of this dispute over the State's western boundary stems from extensive and lengthy "border diplomacy" surrounding the fledgling American Republic and the Kingdoms of France and Spain at the beginning of the nineteenth century, and even before that. Such great historic figures as Napoleon and Jefferson were involved.

As is well known historically, the Louisiana Territory was the subject of a series of transfers between France and Spain, beginning with the Treaty of 1762, retrocession to France by Spain in 1800 by the Treaty of San Ildefonso, and, finally, the Louisiana Purchase from France by the United States in 1803 (8 Stat. 200). See document entitled "Historical Sketch of Louisiana and the Louisiana Purchase" by Frank Bond, published in 1933 by the General Land Office, Department of the Interior.²

The border was the source of continuous dispute

² See Exhibit A for "Historical Sketch of Louisiana and the Louisiana Purchase" by Frank Bond.

and was always an unknown and unsettled quantity both prior to and after the State of Louisiana was admitted into the Union. (See Louisiana's original opposition, p. 10 and its motions and answer, p. 5). However, the Sabine River water system seems to have been a sort of focal point or guideline to which both sides adhered in a rough kind of way.

This dispute, as to the western limits of the Orleans Territory was carried on between the United States and Spain. Finally a "neutral zone" was agreed to between General Wilkinson, representing the United States, and Lieutenant Colonel Herrera, representing Spain, in 1806. The neutral zone was ostensibly between the Sabine and Mermentau Rivers. (See Louisiana's original opposition, p. 10 and its motions and answer, p. 5). It ran north to Red River (Rio Roxo), and the Gulf was its southern boundary.

The Neutral Zone existed from 1806 to 1821. See Haggard's "The Neutral Zone between Louisiana and Texas, 1806 to 1828", (Vol. 28 "The Louisiana and Historical Quarterly" No. 4, (Oct., 1949); also Document 190 H. of R. 25th Congress, 2d Session (1838)). (See also a report to Congress rendered in 1825, being Document No. 445 of the 18th Congress, 2nd Session.)³

The new State of Louisiana was to encompass almost all of the Orleans Territory which was created by an Act of Congress of March 26, 1804, (2 Stat. 283), and the area on the east known as the Florida

³ See Exhibit C for "The Neutral Zone Between Louisiana and Texas, 1806 to 1828" by Haggard.

Parishes. (Gayarre, "History of Louisiana," Vol 4, pp. 265-275). There was created out of the Louisiana Purchase this Territory of Orleans, "which lies South of the Mississippi Territory and of an East and West line to commence on the Mississippi River at the 33rd degree of North latitude, and to extend West to the Western boundary of the said section." The western boundary was still in doubt ("Historical Sketch of Louisiana and the Louisiana Purchase," by Frank Bond, Department of Interior General Land Office, 1933). See the Debates and Proceedings in the Congress of the United States, Eleventh Congress, 3rd Session, comprising the period from December 3, 1810 to March 3, 1811, pp. 521, 522 and particularly the remarks of Congressman Johnson, pointing out the existence of the dispute over the western and southern boundaries between the United States and Spain.⁴

However, Chambers, in his "History of Louisiana," Vol. 1, page 506 noted that the bill authorizing the creation of the State of Louisiana out of the Territory of Orleans fixed the Sabine as the western boundary even though Spain had never conceded that the western limits of the Orleans Territory extended that far.

The Sabine was always the happy medium; and, despite the claims of the adversaries, they consistently fell back on the Sabine waterways as the most likely point for settlement and location of the boundary between the Spanish possessions on the west and the lands of the United States on the east.

⁴ See Exhibit A.

In the middle of these disputes and negotiations, Louisiana was admitted to the United States in 1812.

It is quite true that in the Act of Congress enabling Louisiana to become a state (Feb. 20, 1811, 2 Stat. 641), the Act of Congress admitting Louisiana as a state (April 8, 1812, 2 Stat. 701. Ch. 50), and in the Louisiana Constitution (Jan. 22, 1812, Constitution, Vol. 3, p. 511 West's Edition), the boundary between Louisiana and the Spanish territories is placed in the middle of the Sabine. It should be borne in mind that this dividing line was in the throes of an international dispute. One thing was certain and that was that Louisiana was the westernmost state of the United States.

So, what border was the United States attempting to crystallize? Ostensibly, it was that of the American Union, but essentially it was bound to have been—as a concomitant—that of its westernmost state, Louisiana. The State could not have negotiated a boundary dispute. That lay within the exclusive province of the national government. (U.S. Constitution, Art. I, Sec. 10, Cl. 1).

THE TREATIES

In our original opposition, (pp. 10-11), there appears a capsuled outline of the negotiations between Chevalier de Onis, representing Spain, and John Quincy Adams, Secretary of State and afterwards President, acting for the United States. Spain contended vigorously for a boundary between the Calcasieu and Mermentau Rivers. (Annals of Congress, 15th Con-

gress, 2d Session, 1819, p. 1900).⁵ Adams sought one west of the Sabine but finally proposed, as a compromise, that "the boundary line between the two countries west of the Mississippi shall begin on the Gulf of Mexico at the mouth of the River Sabine in the sea, continuing north along the west bank of that river to the 32nd degree of latitude; thence by a line due north to the 33rd degree of latitude where it strikes Rio Roxo of Natchitoches, etc."

This was finally agreed to as the dividing line by the Treaty of 1819, Article III. (Annals of Congress, Appnd., 16th Congress, 2d Session, pp. 2120, 2121, 2123).⁶ It was also provided in the same Treaty that "all the islands in the Sabine and the said Red and Arkansas Rivers throughout the course thus described to belong to the United States; but the use of the waters and navigation of the Sabine to the Sea and of the said Rivers, Roxo and Arkansas, throughout the extent of the said boundary on their respective banks, shall be common to the respective inhabitants of both Nations."

This was in consonance with United States policy which called for the vesting of title to the beds of navigable streams in new states created out of territories of the United States. In 1819 Louisiana was the only state to which the Sabine's western river-bed could attach as there was no American territory west of it.

During the period of time herein involved, that is the approximate decade following 1819, leading Ameri-

⁵ See Exhibit A.

⁶ See Exhibit A.

can statesmen uniformly referred to the boundary established by the Treaty of 1819 as being the dividing line between the State of *Louisiana* (rather than the United States) and the foreign power to the east. In Document No. 61, 20th Congress, 1st Session, Henry Clay who was then Secretary of State used the following language:

“The Secretary of State, to whom has been referred, by the President, the resolution of the House of Representatives of the 2d instant, requesting him ‘to inform that House, if it be not incompatible with the public interest, whether any representation or arrangement to or with the Mexican Government, has been made so as to enable citizens of the United States to recover debts and property belonging to them, from persons absconding from the United States and taking refuge within the limits of that Government; and whether any steps have been taken to establish the boundary of the United States between the *State of Louisiana* and the Province of Texas,’ has the honor to report:

(Second paragraph not pertinent)

That the Minister of the United States at Mexico, when he was sent on his mission, was charged with a negotiation relating to the territorial boundary between that Republic and the United States in its whole extent; and, consequently, including that portion which *divides Louisiana* from the Province of Texas: but no definitive arrangement on that subject has been yet concluded; and it is respectfully submitted to the President, that, in the present stage of the negoti-

ation, it would be premature to publish the correspondence that has passed between the two Governments." (Emphasis ours).

It is highly significant that, after he became the sixth president of the United States, John Quincy Adams, author of the Adams-de Onis Treaty of 1819 while Secretary of State, used the following language in transmitting a report to Congress:

"In compliance with a resolution of the House of Representatives of the 2d instant, requesting information respecting the recovery of debts and property in the Mexican States from persons absconding from the United States, and also respecting the *boundary between the State of Louisiana and the Province of Texas*, I now transmit a report from the Secretary of State on the subject-matter of the resolution.

JOHN QUINCY ADAMS"

(Emphasis Ours).

See Vol. III of "A Compilation of the Messages and Papers of the Presidents", page 960. ⁷

By the Treaty of January 12, 1828 between the United States of America and the United Mexican States, the dividing limits of the respective countries were declared to be the same as those fixed by the Treaty of 1819. (8 Stat. 372).

The Republic of Texas by Act of December 19, 1836 accepted this boundary. (1 Sayles' Early Laws of Texas, Art. 247).

We might pose the question right here: suppose

⁷ See Exhibit A.

that de Onis' contentions had prevailed, and the Mermentau River had been selected for the boundary, where would Spain have gotten the additional territory to the east? Out of Louisiana, of course. As a consequence, any rectification of the boundary by which Louisiana profited rather than lost should, by a parity of reasoning, redound to her benefit.

In 1838, the United States and the Republic of Texas entered into a Convention by which each appointed a Commissioner to locate, lay out and stake the actual boundary line between said respective sovereigns on the *western* bank of the Sabine water system from the Gulf to the 32nd parallel and continuing thence northward on the land from the *west* bank of the Sabine (where it turns west and ceases to be the border) to the 33rd parallel. John H. Overton was the American Commissioner; and the Commission is often called the "Overton Commission." Physical monuments were constructed to mark the border.

The actual survey was not completed until 1841. A graphic story of its progress and pitfalls appears in Senate Document 199, 27th Congress, 2d Session, 1842, 5 Stat. 312.

As appears from "A Compilation of the Messages and Papers of the Presidents," Vol. 5, page 1932, in the First Annual Address of President Tyler on December 7, 1841, he had this to say:

"The joint commission under the convention with Texas to ascertain the true boundary between the two countries has concluded its labors, but the

final report of the commissioner of the United States has not been received. It is understood, however, that the meridian line as traced by the commission lies somewhat farther east than the position hitherto generally assigned to it, and consequently includes in Texas some part of the territory which had been considered *as belonging to the States of Louisiana and Arkansas.*" (Emphasis ours.)

Nowhere is it asserted that the United States owned any part of this border land.

In 1846, the United States, through the Surveyor General, resurveyed the sections along the west boundary of Louisiana and reduced the size to conform to the survey made by the Overton Commission. The United States refunded to the patentees the amount paid by them for the lands that were determined to be in the Republic of Texas.*

Basis of Texas' Claim

The basic genesis of Texas' claim to the western half of the Sabine derives from the Act of Congress of July 5, 1848 (9 Stat. 245, Ch. 94, 30th Congress, 1st Session) "consenting" to the Texas legislature's extending her eastern boundary so as to include within her limits one-half of the Sabine water system, and the Act of the Texas Legislature of November 24, 1848 (3 Gammel's Laws of Texas, 442) carrying out such extension. Louisiana's legislature never consented to this.

* See Exhibit F.

The fundamental legal question boils down to the validity of the right of the United States to "give" Texas title to a thin 150-foot wide water strip that we contend was already owned by Louisiana, thus defying Article IV, Section 3 of the federal constitution.

It is impossible to believe that, when the Treaty of 1819 between the United States and Spain was concluded, the United States had in mind the establishment of a "buffer" strip between its own westernmost State, Louisiana, and the dominions of the King of Spain to the west. This buffer strip would have consisted of one-half of a 300-foot wide river (and even less than that at certain points because Louisiana's constitutionally established territory *included all islands*). This would be quixotic at best; and no useful purpose could have been conceived therefor, whether for national defense, navigation or exploitation. Inasmuch as the State of Louisiana was part of the American Union, it needed no independent intervening insulation or protection by said Union (as a separate entity), from a potential enemy, i.e., Spain. Assuredly a slender strip of water—less than a stone's throw in width—would not have served such purpose, even if it existed.

The course of historic events justifies the contention that no reason could have existed for the maintenance by the United States (independent of Louisiana) of such a thin buffer zone, i.e., a 150-foot strip, one-half the width of the Sabine to the 32nd parallel and continuing northward on the "land portion" of the boundary between the 32nd parallel (where the Sabine turns west) and the 33rd parallel which is the Lou-

isiana-Arkansas line. As a matter of undisputed fact, *the western boundary of the State of Louisiana on the said "land portion" of the boundary has been recognized as being located exactly on and as coinciding with the western boundary of the United States.*⁹

In the factual stipulation entered into between plaintiff and defendant in this case, Texas has disclaimed ownership of any such "buffer" strip on the "land portion" of the boundary, viz.:

"(b) The eastern boundary of the State of Texas between the 32nd and 33rd degrees of north latitude is a line marked on the ground in 1840-1841 by Commissioners appointed by the United States and the Republic of Texas from the junction of the west bank of the Sabine River with the 32nd degree of north latitude, thence north to the 33rd degree of north latitude, being the same line fixed by the Treaties between the United States and Spain in 1819, between the United States and Mexico in 1828, and in 1838. This line has remained the same since it was so marked on the ground."

Interestingly enough, Texas at one time did assert a claim to the "land portion" of the boundary, between the 32nd and 33rd parallels. Land Commissioner Bascom Giles of Texas wrote Governor Sam H. Jones of Louisiana to this effect on November 25, 1941. Copy of this letter is annexed to the affidavits of Governor Jones and Jacob H. Morrison.¹⁰

Texas takes the position in its answer to our

⁹ See Exhibits A and F.

¹⁰ See Exhibit B and Appendix A to this Brief.

counterclaims that this "land portion" of the boundary between the 32nd and 33rd parallels "has no bearing on this controversy." True it is not part of this lawsuit; but it has a definite bearing on the questions of both intent and action that are strongly persuasive in resolving this controversy.

Insofar as the United States is concerned, it has long ago conceded that *Louisiana's western boundary is located precisely where we contend it is*, namely, along the line staked and located by the "Overton Commission" under the convention of April 25, 1838 between the United States and the Republic of Texas. (Senate Document 199, 27th Congress, 2d Session). This line ran due north from the junction of the *west* bank of the Sabine with the 32nd parallel to the 33rd parallel, the State's northern border.

Yet, according to plaintiff's theory of the case, prior to 1848, the American nation owned in fee simple this strip of water-and-land territory 150 foot wide (half the Sabine's width) running from the Gulf to the 32nd parallel and thence to the 33rd parallel, the Arkansas line. According to Texas theory, it was composed of the space between the Sabine's middle (claimed to be the western boundary of the United States) and its west bank.

Then in 1848, so Texas contends, the United States "gave" Texas the water portion of the boundary (the western half of the Sabine)—from the Gulf to the 32nd parallel. It naturally follows that the United States must have retained the ownership of the land

portion—from the 32nd to the 33rd parallel. However, this apparently did not happen. Louisiana got it though not by any gift. She got it—and this is our basic contention—through the medium of the Adams-de Onis Treaty of 1819. The “enlargement” of the boundary space by the width of the Sabine redounded to the benefit of the American nation’s westernmost state, Louisiana.

How else could Louisiana have obtained this 150-foot wide land strip from the 32nd to the 33rd parallel? It follows logically that, if Louisiana was the beneficiary of this narrow 150-foot wide land strip under the aegis of the Adams-de Onis Treaty of 1819, she was also the beneficiary of the 150-foot wide water strip from the Gulf to the 32nd parallel by virtue of the same treaty.

This reasoning appealed strongly to a learned authority, Mr. Bunyan H. Andrew, who wrote in the “Southwestern Historical Quarterly” in July, 1949:

“This act (of Congress of July 5, 1848) did not authorize an extension eastward of the limits of Texas any farther north than the thirty-second parallel. Obviously, if the national government had, between 1819 and 1848, retained as Federal territory the western half of the Sabine up to the thirty-second parallel, either one or the other of two additional conditions prevailed: first, the Federal possession also extended northward beyond this parallel, comprising the strip lying between the lines running north from the points at which the middle of the river and the west bank of the river, respectively, intersected the said

parallel; or, second, the Louisiana state line was ~~allowed~~ to become identified automatically with the 1819 line. If Congress had retained a strip of Federal territory west of the entire length of the Louisiana line as described in the act admitting this state, then why did Congress not authorize Texas in 1848 to extend her eastern limits to include all the Federal strip? If, on the other hand, the Louisiana boundary was permitted to coincide with the 1819 line north of the thirty-second degree of latitude, why would the Louisiana boundary not 'follow the flag' south of this parallel?"

In its brief, plaintiff uses language implying that Louisiana never claimed that its western boundary was the west bank of the Sabine. This is erroneous.

The Louisiana Legislature adopted a resolution on March 16, 1848 (Senate Misc. Document 135, 30th Congress, 1st. Sess., Vol. 511) in which it expressed doubt as to its jurisdiction over crimes and offenses committed in the west half of the Sabine; and it called on the United States Congress to rectify this situation. However, it asserted the State's *ownership* to the *west* bank of the Sabine. The resolution reads:

"Therefore, be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: first, That the Constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto), viz.: Between the middle of the Sabine river and the western banks thereof, to begin at the mouth of

said river, where it empties into the Gulf of Mexico, and thence to continue along the *said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the State of Texas.*" (Emphasis ours).

We are reinforced in our position by the fact that it is patent on the face of the 1848 Acts, respectively, of Congress, Texas and Louisiana that all the parties had in mind was *criminal* jurisdiction, not fee simple ownership.

On March 18th, 1848 the Texas Legislature resolved to petition its representatives in Congress to "extend the jurisdiction" of Texas over the Sabine.

In the report of Senate action on the Texas resolution of March 18, 1848 (Congressional Globe, 1st. Sess., 30th Congress, June 29, 1848), the Chairman of the Judiciary Committee urged the passage of an Act of Congress extending the eastern boundary of Texas to the middle of the Sabine. The following appears:

"The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas, for the purpose of enabling the latter to extend her *criminal jurisdiction to the Louisiana boundary*. There could be no objection to the bill, and he hoped it would now be passed." (Emphasis ours).

The act of the Texas Legislature dated November 24, 1849, (9 Stat. 245) accepting the extension mentioned above states that the several counties of Texas from the mouth of the Sabine to the 32nd degree of

north latitude "shall have and exercise *jurisdiction* over such portions of the western half of said Pass, Lake and River as are opposite to said counties respectively;" (Emphasis ours).

We have already quoted from the resolution of the Louisiana Legislature adopted on March 16, 1848 from which there can be no doubt that the sole objective thereof was to cure the existing hiatus in the *criminal jurisdiction*. As stated above, said resolution specifically declares that the *western* bank of the Sabine is "*the boundary line between the State of Louisiana and the State of Texas.*"

It is interesting to note that as early as 1910 representatives of Louisiana contended—as we do now—that the Acts of 1848 "relative to the extension" of the limits of Texas to the middle of the Sabine amounted to no more than the bestowal of the *jurisdiction* of that state to the middle of the Sabine.¹¹ See Texas' Exhibit "B" in which reference is made to a legal battle before the Department of the Interior involving two islands in the Sabine River, which resulted in favor of Louisiana. At page 20 of Louisiana's brief, the following appears in referring to the Act of Congress of 1848 (9 Stat. 245):

"This was a grant by Congress of jurisdiction

¹¹ Even the State of Texas has serious doubts on this point, for in its Motion for Leave to File Complaint and Brief in Support of Motion, at page 12, it asserted that it acquired by the Submerged Lands Act of 1953 (67 Stat. 29), title to the strip in dispute. This could not be so since title to this strip was already vested in the State of Louisiana.

pure and simple, and not a grant of territory; for no mention is made of any island, and at that time several were known to lie in the lake and river."

The net result of the foregoing is that there has never been any outright titular conveyance—legally approved by Louisiana's constitutional authorities—of the western half of the Sabine water system by the United States to the State of Texas.

Texas' brief contains a detailed scholarly treatise on the salient episodes in the history of the Texas-Louisiana border dispute (pages 11-16). We have no quarrel with this learned dissertation; and we readily admit that, beginning with Thomas Jefferson, America's statesmen and political leaders—as politicians are prone to do—claimed far more than they ever hoped to get from Spain. Jefferson's imaginative horizons even included the Rio Grande as the western boundary of history's greatest real estate deal—his Louisiana Purchase from France's Napoleon.

However, the realities were out of balance with the hopes, and the result was that the pretensions of the United States' leaders shrank to the Colorado (the one in Texas), then to the Neches and finally to the Sabine by the time the Territory of Orleans was actually formed and Louisiana became a state. Consequently, the area of dispute had narrowed considerably by the time Adams and de Onis began their negotiations that culminated in the Treaty of Amity, Settlement and Limits of 1819.

Each sovereign, respectively, ceded "territories" to the other. In Spain's case, she actually did own ter-

ritory, i. e. land under her effective control and actual administration. This was East and West Florida. The United States' "territories" consisted mostly of claims, without control, to the vast area that is now the State of Texas.

In its brief (pages 18-21), Plaintiff argues forcefully that, in the border negotiations with Spain and in the language of the Adams-de Onis Treaty of 1819 itself, the United States was seeking to define and establish the limits of its bordering "territories"; that since the word "state" was not used, it could not have been acting for the State of Louisiana. We disagree. We believe that the word "territories" was used in its generic sense, meaning simply land, i. e. "a geographical area belonging to or under the jurisdiction of a governmental authority" (Webster's Seventh New Collegiate Dictionary, 1963). This would encompass states as well as officially designated "territories" (such as the former Territory of Orleans), or colonial possessions which, according to Webster, would have "some degree of autonomy."

Certainly, the wild, largely uninhabited area west of the Sabine had no degree of autonomy between 1803 and 1819; and the "authority" of the United States government never went beyond the status of a claim. Control, prior to 1812, was largely a matter of military force and compromise—such as that involving the Wilkinson-Herrera "Neutral Zone."

The logical consequence is that the United States was acting for and on behalf of its westernmost state, Louisiana, as well as for its own territorial lands.

In its brief (pages 22-24), Texas injects a contention that it is possible for the United States to own the bed of a stream even though it does not have jurisdiction over the area occupied by that stream. The example cited is that of the south half of Red River which was involved in the same Adams-de Onis Treaty of 1819. It is appropriate here to refer the Master to the long course of litigation between Oklahoma and Texas, which spawned the following cases:

U. S. v. Texas, 162 U.S. 1, 16 S. Ct. 725 (1896);

Oklahoma v. Texas, 253 U.S. 465, 40 S. Ct. 580 (1919);

Oklahoma v. Texas, 256 U.S. 602, 41 S. Ct. 539 (1920);

Oklahoma v. Texas, 260 U.S. 606, 43 S. Ct. 221 (1922);

Oklahoma v. Texas, 261 U.S. 340, 43 S. Ct. 376 (1922);

Oklahoma v. Texas, 258 U.S. 574, 42 S. Ct. 406 (1921); and

Oklahoma v. Texas, 272 U.S. 21, 47 S. Ct. 9 (1926).

Suffice it to say that the Red River was and is a non-navigable stream and the Sabine water system is a navigable stream. In the article aforesaid, written by Mr. Bunyan H. Andrew, he says:

"It is well established that 'in accordance with the constitutional principle of the equality of States' the title to the beds of rivers within a

state passed to the state when admitted, 'if the rivers were then navigable,' but 'if they were not then navigable, the title . . . remained in the United States.' (Citing *U. S. v. Utah*, 283 U.S. 64, 75, April 13, 1931). Oklahoma did not acquire statehood until 1907, a time at which the Red River was not being used for navigation. It is possible that this river might have been adjudged navigable at some earlier date, but neither Texas nor Oklahoma had any basis for claiming river bed ownership derived from the previous navigability of Red River, provided that the fact of navigability could be established.

Since the Sabine was, in fact, a navigated river during the period in which Louisiana and Texas became states, state ownership of its bed is coextensive with state boundaries. Therefore, more than the mere exercise of jurisdiction is involved in the question of what the Texas-Louisiana boundary is in relation to the Sabine River. And the final answer to this question depends largely on whether or not the Act of July 5, 1848, by which Congress authorized Texas to extend her eastern boundary, is valid." (Emphasis ours)

Plaintiff raises the point (at pages 23-25 of its brief), that Article IV, Section 3 of the United States Constitution states that a territorial possession of the United States cannot be incorporated into an existing state without the consent of Congress. The particular portion of the constitution reads:

"... No new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of

the Legislatures of the state concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States . . . ”

Plaintiff also cites *Van Brocklin v. Anderson*, 117 U.S. 151, 6 S. Ct. 670, 29 L. Ed. 845 (1885). The answer to this argument is that no “new state” was formed in this case. Louisiana was already a state in 1819. Furthermore, in coalescing the western half of the Sabine with Louisiana, Congressional action (Senate approval of the 1819 Treaty) was involved and is relied on by us.

We grant that Congress is authorized to incorporate territories ceded by treaty into the United States as Texas points out; and that Congress is empowered to make laws governing such territories. The “territory” here involved was a 150-foot wide stream of water plus a 150-foot wide strip of land to its north. Our argument is that this did not become a separate “territory” of the United States but was simply an enlargement or rectification of Louisiana’s western boundary.

The United States can add to the territory of a state without any formal act or deed so long as no other state or territory is affected. See *Pope v. Blanton*, 10 F. Supp 18 (1935), decided by a Florida District Court in 1935. Coincidentally, this case involved an interpretation of the same Adams-de Onis Treaty of 1819 that concerns us in this controversy. Plaintiff contended the boundaries set in the Constitution of

1868 and 1865 were illegal "because they conflict with the Treaty of Spain and the United States; because they conflict with the Act of Congress admitting the state into the Union, March 3, 1845, in that the Constitutions fixed the boundaries at three leagues off shore when the law did not contemplate extending the boundaries but one league off shore."

The Court stated:

"Admitting that the boundaries of the state were limited to one league off shore by the Treaty, and by Act of Congress admitting the state into the Union, and so remained until the Constitution of 1868, there is no rule of law to prevent the state, with the approval of Congress, from fixing the boundaries. It may be that it is usual to do this at the time of admission into the Union, but that does not signify that it cannot be done at any other time by agreement *between the state and the Congress, so long as the change does not affect the territory of another state. Louisiana v. Mississippi*, 202 U.S. 1, 26 S. Ct. 408, 50 L. Ed. 913; *New Mexico v. Colorado*, 267 U.S. 30, 45 S. Ct. 202, 69 L. Ed. 499; *Arkansas v. Tennessee*, 246 U.S. 158, 38 S.Ct. 301, 62 L. Ed. 638, L.R.S. 1918 D. 258." (Emphasis ours).

"The consent of Congress need not be expressed, if it is implied from the acquiescence of Congress, and this may appear subsequently as well as at the time 'the compact in this case, having received the consent of Congress, though not in express terms, yet impliedly, subsequently, which is equally effective, becoming obligatory and binding upon all the citizens of both Virginia

and Tennessee. 148 U.S. 503, Text 525, 13 S. Ct. 728, 737, 37 L. Ed. 537."

(Due to lack of jurisdictional amount—dismissed, 229 U.S. 521, 81 L. Ed. 384, 57 Sup. Ct. 321).

Of course, Texas was not "another state" in 1819. It did not even exist.

The *Blanton* case was approved by the Supreme Court of Florida in *Skiriotes v. State*, 197 So. 736 (1940) in the following language:

"From the decided cases, it appears that any state by the approval of Congress has a right to fix its marine boundaries and that if fixed in reason, such right has never been questioned by Congress, by any other nation, or citizen thereof." (Citing *Indiana v. Kentucky*, 136 U.S. 479, 10 S. Ct. 1051, and *Maryland v. West Virginia*, 217 U.S. 1, 30 S. Ct. 268).

Virginia v. Tennessee, 148 U.S. 503, 13 S. Ct. 728, 37 L. Ed. 537 (1893), leaves no doubt that the *consent of Congress* to a boundary compact *may be given subsequently*, or may be *implied from the subsequent action of Congress itself*. (The compact was between the two states).

There can be no controversy over the fact that Louisiana accepted as its western boundary the line of the "Overton Survey" marked by monuments and staked out on the ground.

When Louisiana's western-most parishes (counties) were created by various Acts of the Legislature the boundary situation was reflected. Back in 1843,

for example, the opinion was undoubtedly prevalent that the western boundary of Louisiana coincided with the western boundary of the United States.

These Acts of the Louisiana Legislature creating the parishes (counties) that adjoin the Sabine and the line from its west bank to the 33rd parallel reveal that Caddo (created by an Act of 1843) and DeSoto (created by Act 88 of 1843) have as their western boundaries the "*boundary of the United States*," meaning the line running from the *west* bank of the Sabine north to the Arkansas line. Sabine Parish (created by Act 46 of 1843) specifies the western bank of the Sabine as its western boundary. Beauregard (created by Act 8 of 1912) has the Sabine's middle as its western boundary. The Acts creating the remaining border parishes simply name the "Sabine River" as their western boundaries, without specifying any particular part of it.

We realize, of course, that there have been many occasions in the history of the United States when border states were flanked by extensive territories. However, as a general principle of law where a federal republic, such as the United States of America, is concerned, the boundaries of the United States conform to the external boundaries of the several states. 54 Am. Jur. Sec. 7 p. 525. The United States Supreme Court case cited in support of this principle is *Harcourt v. Gaillard*, 12 Wheaton 523, 6 L. Ed. 716 (1827). This case involved a grant by the British Governor of Florida to plaintiff's ancestor in title dated January 24, 1777, (after the Declaration of Independence) of

land between the Mississippi and Chatahouchee Rivers and between the 31st degree of north latitude to the south and a line drawn from the mouth of Yazoo River due east to the Chatahouchee. The northern boundary of the Floridas was the 31st parallel. This was also the southern boundary of the United States. The claims of the United States, South Carolina and Georgia were united in the general government.

This grant was held to be invalid as the foundation of title in the courts of the United States.

It was contended that the tract had "been legally separated from Georgia before the revolution and attached to West Florida; and, therefore, a grant by the Governor of the latter province was valid if made at any time previous to the treaty of peace." The grant was held to be invalid, as the foundation of title in the courts of the United States.

WHAT IS MEANT BY THE "MIDDLE" OF THE RIVER?

We understand that the Special Master may decide not to determine the actual physical location of the boundary. Nevertheless, in the event of a decision in favor of Texas holding the boundary to be in the middle of the Sabine, rather than on its west bank, the question then will arise as to the meaning of the term "middle". Is it the "geographic middle" or the "thalweg", i.e., "middle" of the "main channel of navigation"?

In Texas' latest pleading, constituting an answer to the Counterclaims of Louisiana (page 7), it force-

fully insists that the "geographic" middle of the Sabine is the correct interpretation. It also contends that Louisiana does not own "all islands" that existed in the Sabine in 1812. On the contrary, Texas argues that Louisiana owns only the islands in the "eastern half of the Sabine". The term "geographic middle" is a convenient coinage of words but is lacking in legal validity.

In *Louisiana v. Mississippi*, 202 U.S. 1, 26 S. Ct. 408, 50 L. Ed. 913 (1906), the Court applied the "thalweg" rule, i.e., (p. 421 of 26 S. Ct.):

"If the doctrine of the thalweg is applicable, the correct boundary line separating Louisiana from Mississippi in these waters is the deep-water channel.

"The term 'thalweg' is commonly used by writers on international law in definition of water boundaries between states, meaning, the middle, or deepest, or most navigable channel.

In *Iowa v. Illinois*, 147 U. S. 1, 37 L. ed. 55, 13 Sup. Ct. Rep. 239, the rule of the thalweg was stated and applied. The controversy between the states of Iowa and Illinois on the Mississippi river, which flowed between them, was as to the line which separated 'the jurisdiction of the two states for the purpose of taxation and other purposes of government.' Iowa contended that the boundary line was the middle of the main body of the river, without regard to the 'steamboat channel' or deepest part of the stream. Illinois claimed that its jurisdiction extended to the channel upon which commerce on the river by steamboats or other vessels was usually conducted. *This court held that the*

true line in a navigable river between states is the middle of the main channel of the river."

Mr. Justice Field, delivering the opinion of the court, said:

"When a navigable river constitutes the boundary between two independent states, the line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is therefore, laid down in all the recognized treatises of international law of modern times that the middle of the channel of the stream marks the true boundary between the adjoining states up to which each state will, on its side, exercise jurisdiction. In international law, therefore, and by the usage of European nations, the term 'middle of the stream,' as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France and Spain, concluded at Paris in 1763. *By the language, 'a line drawn along the middle of the River Mississippi from its source to the River Iberville,' as there used, is meant along the middle of the channel of the River Mississippi.*" (Emphasis ours).

Texas relies on *State of Georgia v. State of South Carolina*, 257 U.S. 516, 42 S. Ct. 173 (1921). That case can easily be distinguished from the case at bar. There the Supreme Court was dealing with a boundary established by *convention*—the Beaufort Convention

of 1787. In the case at bar, Louisiana's boundary, set by both the Act of Admission of April 8, 1812 (2 Stat. 701) and the State Constitution was "a line to be drawn along the middle of the said river (Sabine) including all islands. . ." The only "treaty boundary" or convention-fixed line was that set in the Adams-de Onis Treaty of 1819; and that boundary line was on the "Western Bank" of the Sabine water system. The said Treaty was confected seven years after Louisiana became a state of the Union.

In the Georgia-South Carolina boundary case, the following observation is manifestly correct, as we repeat, the court was dealing with a dividing line fixed by convention:

"However, the general rule is that where a river, navigable or non-navigable, is the boundary between two states and the navigable channel is not involved, *in the absence of convention or controlling circumstances* to the contrary, each takes to the middle of the stream (Handly's Lessee v. Anthony, 5 Wheat. 374, 379, 5 L.Ed. 113; Hall, International Law (6th Ed.) 123; Creasy, First Platform of International Law, 231), and therefore in this case the conclusion of the General Assembly of South Carolina in 1852 and in 1861, as we have quoted it, was clearly the correct one." (Emphasis ours.)

It is quite true that in *Georgia v. South Carolina*, supra, the Court did state that there was no reason for the application of the thalweg doctrine due to the fact that navigation rights were accorded to both of those states. When Louisiana was admitted to the

Union there was no state or territory west of her boundary. The Kingdom of Spain owned the adjacent territory, though, we candidly admit that claims were being made by the United States to lands west of the Sabine.

There is a great difference between a claim and actual ownership or sovereignty.

In 1819 when the Adams-de Onis Treaty was agreed upon, it certainly constituted a "convention" similar to the Beaufort convention that was involved in *Georgia v. South Carolina*. However, we hasten to remind the Special Master that the 1819 treaty or convention with Spain did not fix the boundary line in the middle of the Sabine. On the contrary it was fixed on the western bank. The net result of all this is that the thalweg doctrine is bound to apply because both the Act for Admission and the Constitution of Louisiana fixed the State's western boundary in the "middle" of the Sabine. This is exactly the same language as is used in *Iowa v. Illinois*, 147 U.S. 1, 13 S. Ct. 239, 37 L. Ed. 55 (1892), and *Louisiana v. Mississippi*, supra. In fact, the latter case involved the self-same Constitution of Louisiana of 1812 that concerns us in the case at bar.

Texas' contention (in its latest pleading, i. e. its answer to the counterclaims of Louisiana, p. 7) that the whole basis for the thalweg rule is absent because of free navigation of the Sabine, is refuted by *Arkansas v. Tennessee*, 246 U. S. 158, 38 S. Ct. 304 (1918). At page 305 the following language was used by the United States Supreme Court:

"There is controversy with respect to the application of the foregoing rule to the particular circumstances of this case. It is insisted in behalf of the State of Tennessee that *since the rule of the thalweg derives its origin from the equal rights of the respective States in the navigation of the river*, the reason for the rule and therefore the rule itself *ceases* when navigation has been rendered impossible by the abandonment of a portion of the river bed as the result of an avulsion. In support of this contention we are referred to some expressions of Vattel, Almeda, Moore, and other writers; *but we deem them inconclusive, and are of the opinion, on the contrary, that the contention runs counter to the settled rule and is inconsistent with the declarations of this court, in Nebraska v. Iowa, 143 U. S. 359, 367, 12 Sup. Ct. 396, 399 (36 L. Ed. 186), that 'avulsion would establish a fixed boundary, to wit: the center of the abandoned channel,' or, as it is expressed on page 370 of 143 U. S. on page 400 of 12 Sup. Ct. (36 L. Ed. 186), 'the boundary was not changed, and it remained as it was prior to the avulsion, the center line of the old channel,' and in Missouri v. Nebraska, 196 U. S. 23, 36, 25 Sup. Ct. 155, 158 (49 L. Ed. 372) that the boundary line 'must be taken to be the middle of the channel of the river as it was prior to such avulsion'.*" (Emphasis ours).

In connection with the controversy at hand, after demand was made upon the State of Texas by Governor Jones and Attorney General Stanley in 1941, Honorable Tom Connally, United States Senator from Texas, wrote the United States Department of the Interior

forwarding to it a letter from Bascom Giles, Commissioner of the General Land Office of Texas. An opinion was requested. By letter dated January 5, 1942 addressed to Senator Tom Connally by Fred W. Johnson, Assistant Commissioner of the General Land Office at Washington, the opinion of that department was given as follows:

"This office is of the opinion that the east boundary of Texas is along the middle of the western-most channel of the Sabine River, according to the act of July 5, 1848 (39 L.D. 55), and along the line surveyed by the Commission in 1841, extending north from the point of intersection of the 32° of latitude with the west bank of that river. The act of July 5, 1848, did not change the original boundary line extending north from the Sabine River. Accordingly, the State of Texas can have no claim to the strip of land approximately 150 feet wide, lying between the line as surveyed by the Commission in 1841, and a line extending north from the point of intersection of the 32° of latitude with the middle of the Sabine River." (Emphasis ours.)

In his article entitled "Some Queries Concerning the Texas-Louisiana Sabine Boundary" Vol. LIII, No. 1 of the "Southwestern Historical Quarterly" (1949), Bunyan H. Andrew (p. 16) flatly states, "But the Act of Congress by which Louisiana was admitted as a state reserved to Louisiana 'all islands' in the Sabine " 'to the thirty-second degree of latitude'."

In "Exhibit B" filed by Texas in support of its motion for judgment, a decision by the General Land

Office appears as the first document therein. The question that confronted Texas and Louisiana in that dispute was the ownership of certain islands in the Sabine. The department used the following language on page 3 of its opinion, dated June 27, 1910 (See Texas' Exhibit B, pages 1-8) :

"In the absence of any term limiting or restricting the boundary to a particular channel of the river, the limits described would extend, by the plain language of the statute, *to the farthest or western channel* of the river, even if the other descriptive term, 'including all islands,' had been omitted; but when considered together those terms of description indicate with absolute certainty *that the western boundary of the State is the farthest western branch or channel through which any part of the waters of the Sabine River may naturally flow.*" (Emphasis ours).

This opinion was re-affirmed in 1932. (See Texas Exhibit B, pages 47-49).

Texas relies on various statements and declarations by Louisiana officials which allegedly support Texas' viewpoint and "estop" Louisiana. These will be discussed in detail hereinafter. Except for a single isolated case, none of these expressions of opinion are relevant as they do not pertain to the specific issue of the location of the Texas-Louisiana boundary. However, a definite observation with reference to this specific question was made by Mr. Bascom Giles, Commissioner of the General Land Office of Texas, in his letter to Governor Sam H. Jones of Louisiana dated November 25, 1941. He wrote:

"It has come to my attention that you are contending that possibly the State of Louisiana has title to all of the Sabine River bed. The United States Department of the Interior, by letter dated June 4, 1937, advised the General Land Office of the State of Texas that the center of the Sabine River from its mouth to the 32° of latitude was the boundary line between Texas and Louisiana. Since it is my duty to administer and conserve the public lands of the State of Texas, I have made a rather extensive investigation into the extent of your claim. This investigation convinces me that the State of Texas has title to the west one-half of the Sabine River bed *exclusive of the islands therein.*"

We have emphasized the last clause "exclusive of the islands therein." Assuredly, Texas did not doubt in 1941 that Louisiana owned *all* islands in the Sabine regardless of what side of the stream they appeared in.

A late case entitled *State of Arkansas v. State of Tennessee*, No. 33 Original, 90 S. Ct. 784 (1970), decided on February 25, 1970 concerned the doctrine of the *thalweg* which was admittedly applicable; the question being whether an avulsion had existed. The Court followed the middle of the old abandoned channel holding it to be the correct boundary.

The following decisions by the federal courts leave no doubt that where the term "middle of the river," without any other qualification refers to the "*thalweg*."

Minnesota v. Wisconsin, 252 U.S. 273, 40 S.Ct. 313; *Houge v. Stricker Land and Timber Co.*, 63

F. 2d 167; *Sherill v. McShan*, 356 F. 2d 607; *Anderson-Tully Company v. Franklin*, 307 F.S. 539; *Anderson-Tully Company v. Walls*, 266 F.S. 804; *Anderson-Tully Company v. Tingle*, 166 F. 2d 224; *Iselin v. LaCoste*, 139 F. 2d 887; and *Wisconsin v. Minnesota*, 295 U.S. 455, 55 S.Ct. 786.

II.

PLEA OF ACQUIESCENCE AND PRESCRIPTION

There has been no "acquiescence" on the part of Louisiana in dominion over and use by either Texas or the United States of the western half of the Sabine River System sufficient to estop Louisiana or to constitute prescription based on possession and control.

The threshold obstacles to the position of Texas on this score are the Adams-de Onis Treaty of 1819 between the United States and Spain and the Act for Admission of Louisiana of April 8, 1812, (2 Stat. 701). As stated heretofore in this brief, and as delineated many times in the brief on behalf of Texas, the intent of the Treaty parties was to give the United States, rather than Spain, ownership of the entire area occupied by the Sabine River, Red River and Arkansas River. However, the Treaty aforesaid provides that "the use of the waters and navigation of the Sabine to the Sea . . . shall be common to the respective inhabitants of both nations."

In the Act for Admission of Louisiana as a state of the Union, it was provided that the "navigable rivers and waters . . . shall be common highways, and forever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States . . ."

These highly significant reservations and the physical facts are largely determinative of the issue as to possession and control. In any event, how does one "possess" a river? It is easy to control land. Water is, by nature, something entirely different.

In its brief (pages 27 and 28) Texas asserts that, from 1819 until 1848 the United States exercised "exclusive territorial jurisdiction and ownership over the western half of the Sabine River", and that subsequent to 1848, the exercise of such possession, jurisdiction and dominion over the western half by Texas was acquiesced in by Louisiana. We dispute both postulations.

Texas devotes the last thirteen pages of its brief to the argument that Louisiana is "estopped" to defend this boundary suit as it has allegedly acquiesced in the ownership of, first, the United States from 1819 to 1848, and, second, the State of Texas from 1848 to the present day. Furthermore, it contends that only recently, that is in the last few years, has Louisiana protested and otherwise opposed the use and possession of the western half of the Sabine water system by Texas. This is not so.

At the outset, *we wish to remind the Special Master that 29 years ago Louisiana formally and officially protested the ownership claimed by Texas of the western half of the Sabine.* This was in November and December of 1941. This protest was made through the medium of letters of demand written by former Governor Sam H. Jones and the then Attorney General of Louisiana, Eugene Stanley. (See affidavit of Honorable Sam H. Jones to which is annexed copies of his

letters of November 27, 1941, letter of Bascom Giles, Land Commissioner of Texas dated November 25, 1941 and Jones' letter of December 17, 1941).¹²

A reference to the three letters mentioned above will reveal that the State of Louisiana laid its whole case on the table for all to see. There was no other official route by which a protest could be lodged. In Governor Jones' letter of November 27, 1941, to the Governor of Texas, he said:

"As Governor of the State of Louisiana, and under the authority in me vested by the Constitution and Statutes of this State, I hereby make formal demand for the recognition by the State of Texas, as the true and correct boundary between our respective states, of the western bank of Sabine Pass, Sabine River and Sabine Lake up to the 32nd parallel, and of the line between the 32nd and 33rd parallel of north latitude as established by the joint commission in 1839-41 and as adhered to by the citizens of both states adjoining it."

Louisiana passed Act No. 295 of 1942 authorizing a suit against Texas to establish the correct boundary and appropriated \$10,000.00 for this purpose. The question naturally arises: Why did not Louisiana follow up by filing suit? The answer is that the Japanese attack on Pearl Harbor occurred on December 8, 1941 and the Nation was plunged into war for a period of four years. Governor Jones' term expired before the end of hostilities, and so did that of Attorney General

¹² See Affidavit of Governor Jones with copies of letters attached thereto in Exhibit B and Appendix A of this Brief.

Stanley. Jacob H. Morrison, Special Assistant to the Attorney General, who had conducted extensive research on the boundary issue, was in the army and was not released until late in 1945. So the controversy was not litigated.

After the war, so many new problems and issues engrossed the attention of Louisiana's new political leaders that no attempt was made to carry out the legislative mandate.

It stands to reason that from and after 1941, everything that Texas did or performed in the western half of the Sabine water system was done at her own risk and with knowledge that those who acted under her authority did so at their peril.

With admirable diligence the Texas legal staff has assembled a formidable array of leases, contracts, and agreements and has produced proof of a large number of acts in or affecting the western half of the Sabine. (On behalf of Louisiana, we have counter-attacked with similar material.)¹³

Inasmuch as Louisiana had presented its claim and protest to the Texas authorities in 1941, none of the acts and deeds performed by Texas subsequent to 1941 are relevant.

In subscribing to leases and agreements and in building bridges and other public works between 1941 and 1970, Texas was charged with knowledge that such acts might be nullified.¹⁴ Moreover, Texas and Louisi-

¹³ See Exhibits D., E, and G.

¹⁴ See Affidavits of Mr. A. D. Jackson, Assistant Director

ana worked cooperatively in Sabine River improvement projects without either state considering acutely the boundary dispute.

It is not up to a State to protect some other state or private party holding from that state. In addition there are other considerations on which we will now dwell.

We will divide our discussion of the argument and evidence produced by plaintiff State into three (3) main categories:

- (1) General discussion of "acquiescence" and "prescription";
- (2) Plaintiff's reliance on utterances and observations by various Louisiana authorities; and
- (3) A discussion of the evidence adduced by both Texas and Louisiana on this subject.

Plaintiff asserts (p. 26 of its brief) that the alleged "*exclusive territorial jurisdiction and ownership*" on the part of the United States extended from 1819, the date of the Adams-de Onis Treaty with Spain, to 1848, the year of the passage of the Acts of Congress and of Texas that purported to extend the eastern boundary of that State to the middle of the Sabine.

In Subdivision I of this brief, we have set forth our reasons for disagreeing with this proposition; and we reiterate our basic premise that as a result of the 1819 Treaty, Louisiana's border area encompassed

of the Louisiana Department of Highways, and Mr. Richard K. Yancey, Assistant Director of Louisiana Wild Life and Fisheries Commission in Appendix A to this brief and Exhibit B.

the western half of the Sabine from the Gulf to the 32nd parallel.

Just what "territorial jurisdiction" could the national government have had over this thread-thin strip of border water? The entire section was virgin land, overgrown with forests. No forts, harbors, customs houses, court houses or other indicia of the federal presence existed in the mud of the western Sabine. Under the Treaty of 1819, the use and navigation of the entire Sabine was open to the inhabitants of both Spain and the United States; the same thing was true under the Act of Louisiana's admission of 1812. This necessarily implied that citizens of Louisiana fished, hunted, boated and logged all over the river. Any degrees of use by federal officials could only have been infinitesimal, quite different from the United States government's activities in the inland waters today where dredging, levee protection, and navigation controls go on without cessation.

After 1848, there can be no doubt that no single Louisiana fisherman, logger, trapper or boatman ever hesitated to utilize the western half of the Sabine, that is until a bootlegger tried it in 1901—The *Burton Case*. By the same token, Texans took advantage of the *entire* Sabine in their commercial and recreational activities.¹⁵

We grant that, as time went on, large towns such as Orange and Port Arthur were built on the western bank of the Sabine. Texas could have built right up to

¹⁵ See Exhibit C.

the line on the west bank as a matter of law and so it did. She also had certain rights of user of the bank itself. The Treaty of 1819 itself contains the words, "on their respective banks", in speaking of the common use of the Sabine waters.

Furthermore, in *Oklahoma v. Texas*, 260 U.S. 606, 43 S. Ct. 221, 67 L. Ed. 428 (1922) the Court said:

"Texas places some reliance on the concluding words of the treaty provision, 'but the use of the waters, and the navigation of the Sabine to the Sea, and of the said rivers Roxo (Red) and Arkansas, throughout the extent of the said boundary, on their respective banks shall be common to the respective inhabitants of both nations.' *As already observed, these words show that the boundary intended is 'on' the bank.* No doubt they reserve and secure a right of access to the water, at all stages, adequate to the enjoyment of the permitted use; but they afford no basis for regarding the boundary as below the bank or within the river bed. *Dunlap v. Stetson*, 4 Mason, 349, 366, Fed. Cas. No. 4,164. This part of the treaty provision is quite unlike the old compact considered in *Maryland v. West Virginia*, 217 U.S. 577, 30 Sup. Ct. 630, 54 L. Ed. 888, which gave to the citizens of Virginia full property in the shore of the Potomac, and so carried the jurisdiction and title to the water's edge. See *Handly's Lessee v. Anthony*, 5 Wheat. 374, 385, 5 L. Ed. 113. In an earlier opinion disposing of other phases of this suit it was determined that the section of the Red river adjacent to this boundary is not navigable. 258 U.S. 574, 42 Sup. Ct. 406, 66 L. Ed. 771." (Emphasis ours).

Following this is a discussion of the "Overton Survey" from which it appears that Louisiana's Commissioner, Overton, prevailed. His view that the boundary line was along the mean water line on what he defined as the bank prevailed.

The simple fact is that, until well after the turn of the century, there was no reason for either Texas or Louisiana to be anything but indifferent to what was happening in a 150-foot strip of water. Add to this the fact that few persons even knew of the existence of any border problem and could not have cared less.

We are well aware of the well recognized doctrine of "acquiescence" and "prescription" upon which Texas relies. However, we are confident that it does not apply to the facts of the case at bar. A glance at the long line of decisions by the United States Supreme Court that formulate this doctrine buttresses our opinion on this score.

The cases of *Virginia v. Tennessee*, supra; *Indiana v. Kentucky*, 136 U.S. 479, 10 S. Ct. 1051, 34 L. Ed. 329 (1890); *Missouri v. Kentucky*, 11 Wall (U.S.) 395, 20 L. Ed. 116 (1871); *Rhode Island v. Massachusetts*, 4 How. 590, 11 L. Ed. 1116 (1846) are authority for the following well recognized rule:

"This court has many times held that, as between the states of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it should be accepted as conclusive, whatever the international rule might be in re-

spect of the acquisition by prescription of large tracts of country claimed by both."

Virginia v. Tennessee, supra, concerned a line that had been run on the ground by commissioners from both states in 1803. *Rhode Island v. Massachusetts*, supra, concerned a point of beginning that had been made in a survey in 1642 and a line that had been run on the ground by commissioners from each colony. *Indiana v. Kentucky*, supra, involved the title to an island in the Ohio River; and the question was whether the boundary was the north channel or the south channel. Kentucky proved that it had exercised control, jurisdiction and possession over the island.

Maryland v. West Virginia, 217 U.S. 1, 30 S. Ct. 268, 54 L. Ed. 645 (1910) was a dispute over which line—the Deakins line, or the Michler line—was correct; the court held that the former had been recognized and used as a boundary on both sides.

New Mexico v. Colorado, 267 U.S. 30, 45 S. Ct. 202, 69 L. Ed. 499 (1925), concerned the location on the ground of the Darling line. The doctrine of recognition of a long existing physical status was applied.

In *Arkansas v. Tennessee*, 310 U.S. 563, 60 S. Ct. 1026, 84 L. Ed. 1362 (1940), the decision was based entirely on the fact that the disputed island had been possessed by Tennessee for many years; taxes had been paid to that state; land titles had emanated from that state; the inhabitants had voted in Tennessee, etc.

Louisiana v. Mississippi, supra, was a boundary action in which the determining factor was possession and control of the St. Bernard Peninsula.

Most of the cases concerned boundaries laid out on terra firma, where water boundaries were involved, but possession of the water did not constitute an issue. For example, *Indiana v. Kentucky* and *Arkansas v. Tennessee* involved disputes as to which arm or branch of the Ohio and Mississippi Rivers, respectively, constituted the correct boundary. In each, an island lay between the branches; and possession of the *island*—not of any of the streams—was the deciding factor.

In *Louisiana v. Mississippi*, *supra*, the court upheld Louisiana, following the thalweg doctrine along the watercourse claimed by Louisiana east of the St. Bernard Peninsula. If Mississippi had prevailed, the entire St. Bernard Peninsula would have been transferred from Louisiana to Mississippi. Possession did not involve a watercourse but land between water channels. The Supreme Court held that the area in question, consisting of low lands, marshes, islands, etc., had been under the dominion and control of Louisiana for many years.

In enumerating the criteria relied on to prove possession, control, acquiescence and dominion, in all of the foregoing cases, the Supreme Court emphasized such acts as paying taxes, land titles, voting in elections, jurisdiction of courts, enforcement of laws, etc., as being of high importance.

It is readily apparent that none of the foregoing decisions can possibly apply to the facts in the litigation at hand. The essential point is that not only could there have been no dominion over or control of the west

half of the Sabine, but practically nobody knew where the middle of the river was at any given point or at any particular time. Assuming that the thalweg rule applies, there would have been a constant change in the "main channel of navigation." Assuming pro arguendo that the geographic middle of the Sabine is correct in delineating the "middle", it would have been impossible for a layman using the river or even a government official in granting a lease to know where the geographic middle was.

In *New Jersey v. Delaware*, 291 U.S. 361, 54 S. Ct. 407, 78 L. Ed. 847 (1934), there were two points at issue, involving the correct boundary between the States of New Jersey and Delaware. One of these points was the question of whether or not Delaware owned the entire bed of the Delaware River within a circle of 12 miles about the town of New Castle, referred to as the "Circle", or whether she owned only to the center of it. New Jersey contended that the proper boundary was the middle of said body of water.

The Court analyzed the various legislative enactments, finding that the true and correct boundary between the States of Delaware and New Jersey was the eastern bank of the Delaware River. Hence, the holding was that the entire bed of the Delaware River within the limits of "The Circle" up to low-water mark on the eastern bank thereof was owned by Delaware.

New Jersey contended that riparian proprietors who were citizens of New Jersey and had held their titles from her had been permitted by Delaware to

build wharves and piers projecting into the Delaware River within "The Circle"; hence, that, as the structures were built and maintained without protest on the part of Delaware and, in fact, with her approval, that this constituted an acquiescence in the ownership of New Jersey of half of the Delaware River comprised within the 12-mile "Circle" about the town of New Castle.

Justice Cardozo, as the organ of the Supreme Court, disposed of these contentions in the following significant language, at Page 412:

"The acts of dominion by riparian proprietors are connected with the building of wharves and piers that project into the stream. The structures were built and maintained without protest on the part of Delaware, and no doubt with her approval. There is nothing in their presence to indicate an abandonment by the Sovereign of title to the soil. By the law of waters of many of our states, a law which in that respect has departed from the common law of England, riparian proprietors have very commonly enjoyed the privilege of gaining access to a stream by building wharves and piers, and this though the title to the foreshore or the bed may have been vested in the state. *Yates v. Milwaukee*, 10 Wall. 497, 19 L. Ed. 984; *Scranton v. Wheeler*, 179 U. S. 141, 157, 158, 21 S. Ct. 48, 45 L. Ed. 126; *Shively v. Bowlby*, *supra*, at pages 24, 55 of 152 U. S., 14 S. Ct. 548; *Town of Brookhaven v. Smith*, 188 N. Y. 74, 80 N. E. 665, 9 L. R. A. (N. S.) 326; *United States v. Dern*, 289 U. S. 352, 357, 53 S. Ct. 614, 77 L. Ed. 1250. New Jersey in particular has been liberal in according such a

license (*State v. Jersey City*, 25 N. J. Law, 525), and so, it seems, has Delaware (*Harlan & Hollingsworth Co. v. Paschall*, 5 Del. Ch. 435; *State v. Reybold*, 5 Har. 484, 486), though in Delaware, unlike New Jersey, title to the foreshore is in the riparian proprietor. From acquiescence in these improvements of the river front, there can be no legitimate inference that Delaware made over to New Jersey the title to the stream up to the middle of the channel or even the soil under the piers. The privilege or license was accorded to the owners individually and even as to them was bounded by the lines of their possession."

Vermont v. New Hampshire, 289 U.S. 593, 53 S. Ct. 708 (1933) is closely in point. The Court decided that the western bank of the Connecticut River was the correct boundary. The following excerpt is from the Supreme Court's opinion:

"We think that the practical construction of the boundary by the acts of the two states and of their inhabitants tends to support our interpretation of the Order-in-Council of 1764, and of the resolutions of Congress and of Vermont Legislature, preceding the admission of Vermont to the Union. We conclude that the true boundary is at the low-water mark on the western side of the Connecticut River, as the special master has found. We adopt his definition of low-water mark, which is not challenged here, as the line drawn at the point to which the river recedes at its lowest stage without reference to extreme droughts."

Texas places considerable reliance on various expressions in briefs and opinions by Louisiana author-

ities. The case of *State v. Burton*, 105 La. 516, 29 So. 970 (1901) and other statements and written data do contain language to the effect that within the context and circumstances of their utterances, the middle of the Sabine River water system from the Gulf to the 32nd parallel was believed to be the correct boundary between Louisiana and Texas. None of these statements estop Louisiana in any way nor do they constitute any type of res judicata or binding administrative and judicial acts.

All of these statements were rendered in connection with litigation that did not involve or even concern the precise location of the boundary. They were uttered "en passant", and were not intended to be declarations determinative of the boundary location. The boundary was a pertinent point in *State v. Burton*, supra. This was a criminal case and the record shows that the Supreme Court did not have the benefit of the authorities herein relied upon when it simply held that the criminal jurisdiction of Louisiana extended only to the middle of the Sabine.

This is evident when one considers that the Louisiana Supreme Court, compressed within the narrow confines of a single paragraph, and in the most cavalier fashion, all the law that it had before it; this included reference to a Texas Act of 1856 and a decision by the Criminal Court of Appeals of Texas (*Spears v. State*, 8 Tex. App. 467).

The Special Master will recall that in the resolution adopted by the Legislature on March 16, 1848, this

hiatus in the criminal law was dealt with; the Louisiana Legislature having expressed the belief that the law of Louisiana did not extend over the western half of the Sabine. It left no doubt that it thought the actual boundary was located on the Sabine's west bank, when it asked Congress to extend the state's *jurisdiction* to the western bank of the Sabine; i. e.:

"And thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the State of Texas." (Emphasis ours)

It is axiomatic that criminal proceedings must be based on positive law free from any doubt. The Legislature had no doubt as to the location of the Louisiana-Texas boundary, the west bank of the Sabine.

The Supreme Court of the United States has made it clear that decisions of state courts taking an erroneous view of the law are not binding in a direct action between states involving solely the issue of the location of the boundary between them.

In *Arkansas v. Mississippi*, 250 U.S. 39, 39 S. Ct. 422 (1919), the court considered certain decisions and expressions by the Supreme Court of Mississippi concerning local questions in which said court stated its belief that the geographic middle of the river was the correct boundary. The United States Supreme Court disregarded such expressions in their entirety, declaring:

"But whatever may be the effect of these decisions upon local rights of property or the administra-

tion of the criminal laws of the state, when the question becomes one of fixing the boundary between states separated by a navigable stream, it was specifically held in *Iowa v. Illinois*, supra, followed in later cases, that the controlling consideration is that which preserves to each state equality in the navigation of the river, and that in such instances the boundary line is the middle of the main navigable channel of the river." (Emphasis ours)

In *Arkansas v. Tennessee*, 246 U.S. 158, 38 S. Ct. 304 (1918), the Supreme Court of Arkansas had handed down an opinion that the boundary line between the two rivers was equidistant from the permanent banks of the channel. The Supreme Court of Tennessee had reached a similar conclusion. Furthermore, Tennessee's General Assembly appointed a commission to locate the line in an abandoned channel of the river. The United States Supreme Court held that *none* of these decisions and legislative acts *amounted to such acquiescence as would determine the true location of the boundary*.

Apropos of the case of *State v. Burton*, 29 So. 970, 105 La. 516, also 31 So. 291, 106 La. 732, upon which Texas places great reliance and which is discussed by us a few pages back in this brief, it is interesting to note that the United States Supreme Court in this very case, *Arkansas v. Tennessee*, commented on and refused to follow an Arkansas state decision which, like *State v. Burton*, supra, involved a prosecution for violation of the liquor laws. At page 304 of 38 S. Ct., the following appears:

"It is said that Arkansas has interpreted the line to be at a point *equidistant* from the well-defined and permanent banks of the river, that Tennessee likewise has recognized this boundary, and that by long acquiescence on the part of both States in this construction, and the exercise of jurisdiction by both in accordance therewith, the question should be treated as settled. The reference is to certain judicial decisions, and two sets of legislation. In *Cessill v. State* (1883) 40 Ark. 501, *which was a prosecution for unlicensed sale of liquors upon a boat anchored off the Arkansas shore*, it was held that the boundary line, as established by the original treaties and since observed in federal legislation, state constitutions, and judicial decisions was the 'line along the river bed equidistant from the permanent and defined banks of the ascertained channel on either side.' This was followed in subsequent decisions by the same court. *Wolfe v. State* (1912) 104 Ark. 140, 143, 148 S.W. 641; *Kinnanne v. State* (1913) 106 Ark. 286, 290, 153 S.W. 262. The first pertinent decision by the Supreme Court of Tennessee is *State v. Pulp Co.* (1907) 119 Tenn. 47, 104 S.W. 437, in which a similar conclusion was reached, partly upon the ground that it had been adopted by the courts of Arkansas." (Emphasis ours).

Following this, the Supreme Court discussed Tennessee statutes and Arkansas decisions which latter, as the Court said: "had for their object the establishment of a proper rule for the administration of the criminal laws of the State." (Emphasis ours).

In *Oklahoma v. Texas*, 272 U.S. 21, 47 S. Ct. 9, (1926), the syllabus reads as follows:

"In action to establish boundary between Oklahoma and Texas north from South fork of Red river, stipulation of parties that since 'Greer County' decision of the United States and the territory and State of Oklahoma, in succession, *had continuously enforced their civil and criminal laws over territory in dispute, held insufficient to establish Oklahoma's claim to such territory by prescription.*" (Emphasis ours).

In *New Jersey v. Delaware*, 291 U.S. 361, 78 L. Ed. 847 (1934), the Supreme Court disregarded proof of assessments for taxes, making of deeds, and service of process by New Jersey in the disputed area; inasmuch as there was no showing that Delaware had acquiesced.

At page 37 of its brief, Texas comments on a statement by the present Louisiana Attorney General in *U. S. v. Louisiana, et al*, No. 10, Original, October Term 1959. The brief in this case was joined in by all five (5) defendant states; and it involved one of the many "Tideland Cases" from 1947 through 1960. These cases had nothing to do with the Sabine as they involved a controversy with the United States over the submerged lands offshore. Consequently, any reference to Louisiana's boundary (other than the Gulf of Mexico boundary) had nothing to do with the questions at issue.

The boundaries of Louisiana were described according to its Act of Admission and in the Act Admitting Louisiana into the Union, but that was done for one purpose alone, and that was to bring into focus the

words, "including all islands within three leagues of the coast." There was no issue in the Tidelands Case involving the boundary between Texas and Louisiana above the shore or coast line, only the location of the coast line and the distance seaward from that coast line that Louisiana's seaward boundary extended.

In undertaking to bring the contentions made by Louisiana in the Tidelands Case into the Sabine boundary issue, Texas acts inconsistently. When No. 36 Original, October Term 1969 was instituted, Texas expressed the conviction that the issue should be restricted to areas within Sabine River, Sabine Lake and Sabine Pass, and it was well justified; but now Texas abandons its expressed fears by undertaking to bring the tidelands area into the Sabine boundary action.

Texas states, among other things, on page 37 of its brief that the Louisiana Attorney General and other attorneys for the state have recognized the mid-stream boundary of the Sabine, specifically referring to the position taken by Louisiana in *Louisiana v. Mississippi* (1906), 201 U. S. 1. In that case, the State of Louisiana contended that the thalweg rule governed the boundary between the two states in the area of the St. Bernard peninsula, seaward of the mouth of Lake Borgne, and the Court upheld that contention. There can be no relevancy between the border line controversy brought into focus in the Louisiana-Mississippi case and the boundary issue involved in the present action; even if there were, Louisiana is alternatively taking the same position in this boundary action, and, at least, manifests consistency. Texas contends that if the

boundary between Texas and Louisiana in the area of the Sabine is not found to be on the west bank of Sabine River, Sabine Lake and Sabine Pass, the border between the two states is in the geographical middle of said water bodies and that the thalweg rule is not applicable. The point made by Texas is that Louisiana is bound in this action by the position it took in the *Louisiana-Mississippi* case. Alternatively, Louisiana is, in fact, taking the same position in this action, and it is difficult to understand why Texas should insist upon the application of the thalweg rule in this action when that state takes the contrary position in its pleadings and brief that such rule is inapposite and should not govern.

In further support of the assertion made that the Louisiana Attorney General and other attorneys for the state have recognized the mid-stream boundary of the Sabine, on pages 37 and 38 of its brief, Texas refers to a brief filed by an attorney representing Louisiana in a case before the General Land Office in 1909 (39 Land Decisions 53). Texas has annexed a copy of the decision in the appendices to its brief (Exhibit B, Item 2), but no copy of the brief, and in the absence of same, Texas cannot undertake to establish its assertion. The decision reflects, however, that the boundary between Texas and Louisiana was not the issue but the ownership of two islands in the Sabine River. The question involved in the proceeding was whether the two islands inured to Louisiana under the Swamp Land Grants. It was not a matter of Louisiana agreeing with Texas but of Texas agreeing with Louisiana.

No opinion of any Louisiana Attorney General has been found in which the view was taken that the boundary between Texas and Louisiana was located in the geographical middle of the Sabine system. On the contrary, however, two opinions of the Attorney General of Louisiana, one dated April 12, 1945, rendered to Bunyon H. Andrew, and another, dated November 23, 1966, rendered to Honorable Ellen Bryan Moore, Register of State Land Office, have been located in which the view was expressed that the boundary between Texas and Louisiana was the west bank of the Sabine.¹⁶

In its brief and supporting documents (pages 33-38), Texas devotes considerable space to various acts performed by it in the western half of the Sabine such as the enforcing of laws, contributing to the construction of bridges, improvements on the bank and adjacent islands by Port Arthur, navigation improvements; sales and leases for shells and sand.¹⁷ In the light of the

¹⁶ See Exhibit B.

¹⁷ The evidence offered by Texas in support of its assertion of Louisiana's acquiescence consists very largely of a record of things done and money spent by Texas in the Sabine River area, which only shows the interest of Texas in improving the general area, and does not reflect any acquiescence by Louisiana in establishing a mid-stream boundary. As a matter of fact, Texas and Louisiana have worked cooperatively to improve said area and have contributed money jointly to such development programs. So that evidence produced by Texas does not reflect acquiescence by Louisiana at all. Louisiana has reacted favorably to the development programs of Texas, and Texas has done the same in regard to the development programs undertaken by Louisiana, none of which was done with any intent to establish the legal boundary between the States.

authorities cited immediately above none of these acts constitute "dominion" or "possession". See the case of *New Jersey v. Delaware*, 291 U.S. 361, 54 S. Ct. 407, 78 L.Ed. 847, supra, and authorities therein cited in lengthy quotations from Justice Cardozo's opinion.

As has been frequently stated above, that the use and navigation of the Sabine was common to both states; so dominion or control by either state was not a vital question. While "acquiescence" is alleged by Texas, we are sure that the Special Master will keep in mind the fact that there is no adequate proof of same. In any event, there are disputed facts on this issue, as is evident from the affidavits in Appendix A.

As the exhibits in this case reflect, there has always existed a certain degree of confusion, doubt and uncertainty in regard to the Texas-Louisiana boundary. No better illustration can be given than the exchange of letters between Honorable Price Daniel, leading counsel for Texas in this case, and the Attorney General of Louisiana, in 1951. See Texas' Exhibit 3, pages 24-27a. In 1951, a new political administration had taken over in Louisiana. As so often happens, most of the threads of communication with the old administration had been severed. The Attorney General of Louisiana at that time, Bolivar Kemp, Jr., did not seem to be aware at all of the fact that Louisiana had made definite and specific demands on Texas ten (10) years before, namely, in November and December of 1941, to recognize Louisiana's boundary assertion. However, Mr. Kemp did mention the fact that Louisiana claimed the entire Sabine, to its west bank.

In other documents which the attorneys for Texas have included in their Exhibit C, the west bank was assertedly the proper boundary. See particularly Item 18, page 38, concerning the McKee lease in 1930; the Attorney General's Memorandum in 1965 (Item 16, pages 33-36); and former Governor Sam H. Jones' letter of December 12, 1949 (Item 23, page 49).

In a letter by Mr. Sadler, Land Commissioner of Texas, dated December 14, 1964, he stated:

"It has long been recognized by officials of both Louisiana and Texas that the exact location of the boundary between the two states had been in dispute and from our past discussion and correspondence it is apparent that both states recognize the seriousness of the problem and the need for a settlement."

Texas has filed as Exhibits A. and F., two large volumes of maps by Federal, state and local authorities. While we admire the energy and zeal of the Texas legal staff in searching for and gathering such a voluminous array of documents, we think that acquiescence which each state has attributed to the other is of relative unimportance compared with the major issues. Its exhaustive efforts notwithstanding, it is still incumbent on Texas to establish that all of the maps filed as exhibits aforesaid are actually official and were made for the purpose which Texas represents them to reflect. The respective dates of the maps should also be considered in relation to the representations made by Texas concerning the weight to be given them. Louisiana's title cannot be defeated by this type of evidence.

Cartographers, like other technicians, have defi-

nite tasks assigned to them, and they do not go beyond the limits of their instructions. We venture to say that no cartographer, without specific instructions to govern his thinking and actions to the contrary, would ever think of the possibility that a river boundary between equal sovereign states would be elsewhere than the usual happy medium, namely, the middle of the stream, although there are many such boundaries. Furthermore, not one of them would think of the "thalweg" doctrine, though this is a well-known principle of law.

The record leaves no doubt that law enforcement agencies of both states patrolled all over the Sabine and neither confined itself to the middle thereof (assuming that anyone knew just where the "middle" was).

We have introduced written proof that Louisiana as well as Texas has granted shell leases, mineral leases, etc. and has enforced its fishing and gaming laws without regard to any scientific or geographic location of the boundary.

In these cases there is usually an affidavit Armagedon; this case is no exception. We have produced the affidavit of Dr. Lyle S. St. Amant, Assistant Director of the Louisiana Department of Wild Life and Fisheries, from which it appears that 24 out of 25 leases granted by Louisiana for the removal of shells covers the entirety of Sabine Lake or Sabine Pass, as the case might have been.¹⁸

¹⁸ See a copy of Dr. Lyle S. St. Amant's affidavit in Appendix A to this brief and Exhibit D.

The affidavit of Ory G. Poret, Deputy Register of the Louisiana State Land Office, establishes that the 18 mineral leases affecting the Sabine waterways cover the west side thereof. Further, that right-of-way grants cover submerged lands in the western half of Sabine River, Pass and Lake; in addition, that from his search of the records, Louisiana has asserted title, throughout the Sabine, to the west bank thereof.¹⁹

The affidavit of Hatley N. Harrison, Jr., Chief, Land and Surveys Division, Louisiana Department of Public Works, points out that cognizance had long been taken of the legal dispute over the boundary and that the various maps showing lines in the Sabine were never drafted officially to recognize the establishment of any boundary line between Louisiana and Texas.²⁰

A. D. Jackson, Assistant Director of the Louisiana Department of Highways, states, by affidavit, that it was never the intention of the Louisiana Department of Highways, in entering into various agreements regarding construction of bridges, etc., with the State of Texas or the preparation and issuance of the various highway maps, to establish any legal boundary between the respective States.²¹

The affidavit of Richard K. Yancey, Assistant Director of the Wild Life and Fisheries Commission

¹⁹ See a copy of Ory G. Poret's affidavit in Appendix A to this brief and Exhibit E.

²⁰ See a copy of Hatley N. Harrison's affidavit in Appendix A to this brief and Exhibit G.

²¹ See a copy of A. D. Jackson's affidavit in Appendix A to this brief and Exhibit B.

of the State of Louisiana, states that, while there have been agreements signed between the State of Texas and the State of Louisiana concerning fishing and hunting in the Sabine, it was never the purpose of any of such agreements to establish any legal boundary between the two States.²²

In recent years—the 1960's—Louisiana adopted the policy of recognizing the existence of the boundary dispute and acted accordingly. Prior to that time, this State simply went along with any and all joint projects concerning the building of bridges and other acts in the western half of the Sabine River, without attempting to establish a legal boundary or waive Louisiana's claim. Its attitude concerning cooperative projects and efforts undertaken with the United States Government was the same.

Insofar as the payment of taxes levied by Texas on property, facilities and structures in the Sabine system is concerned, Louisiana taxing officials, if informed of such taxation at all, simply allowed such matter to take its course, very much in the same manner, it is suspected, that Texas taxing officials reacted to any such taxation, known to have been engaged in by Louisiana. The levy and collection of ad valorem taxes on or against a relatively few oil or gas well drilling rigs and the equipment and facilities thereof in the waters of the Sabine River, Sabine Lake and Sabine Pass would certainly not lay any realistic

²² See a copy of Richard K. Yancey's affidavit in Appendix A to this brief and Exhibit B.

foundation for either state to charge acquiescence against the other.

For the foregoing reasons, we submit that Louisiana is not estopped, nor has she ever acquiesced in any acts by Texas that are alleged to have estopped her from asserting the right to a boundary located on the west bank of the Sabine. We have demonstrated from decisions of the Supreme Court of the United States, cited above, that the activities in the western Sabine relied on by Texas fall far short of constituting the requisites of ownership, dominion or control.

The Special Master is thoroughly familiar with the law having reference to summary judgments. One of the latest cases on this subject was decided in 1969 by the Court of Appeal for the Fifth Circuit which has jurisdiction over both Texas and Louisiana.

In *Lighting Fixture and Electric Supply Co., Inc. v. Continental Insurance Co.*, 420 F. 2d 1211, 1213, the following appears:

"On a motion for summary judgment, the trial court must determine whether a genuine issue of material fact exists rather than how that issue should be resolved. Summary Judgment should only be granted, this Court has stated, 'when it is clear what the truth is and where no genuine issue remains for trial.' *United States v. Burket*, 5 Cir. 1968, 402 F. 2d 426, 430. A summary judgment may be improper even though the basic facts are undisputed if the parties disagree regarding the material factual inferences that properly may be drawn from these facts. See, e.g. *N.L.R.B. v. Smith Industries, Inc.*, 5 Cir.,

1968, 403 F. 2d 889, 893; Keating v. Jones Development of Missouri, Inc., 5 Cir., 1968, 398 F. 2d 1011, 1013."

We respectfully submit that there should be judgment overruling the motion for summary judgment filed by the State of Texas, and judgment should be rendered in favor of the State of Louisiana sustaining its plea of accord and satisfaction.

Respectfully submitted,

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

EDWARD M. CARMOUCHE,
Assistant Attorney General.

OLIVER P. STOCKWELL,
Special Assistant Attorney General.

JACOB H. MORRISON,
Special Assistant Attorney General.

SAM H. JONES,
Special Assistant Attorney General.

Attorneys for defendant.

CERTIFICATE

I, JACK P. F. GREMILLION, Attorney General of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1970, I served copies of the foregoing brief by transmitting conformed copies of the same, by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General of the United States, in compliance with Rule 33.2 (b) of the Rules of the Supreme Court of the United States.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana

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No. 36, ORIGINAL

In the
Supreme Court of the United States

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

Before the Honorable
Robert Van Pelt, Special Master

AFFIDAVIT IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT FILED BY THE STATE OF
TEXAS

STATE OF LOUISIANA

Parish of East Baton Rouge

BEFORE ME, the undersigned authority, personally came and appeared HATLEY N. HARRISON, JR., who, upon first being duly sworn, did depose and say:

That he is Chief, Land and Surveys Division of the Department of Public Works, State of Louisiana, and that he is familiar with the records of his office, which are under his supervision and control, and that this affidavit is based on said records and is true to the best of his information and belief.

That the Louisiana State Legislature, by Act 159 of July 16, 1928, directed the Board of State Engineers, in co-operation with the Federal Government, to make a topographic survey and to prepare a topographic map of Louisiana. That in accordance with this Act, the State of Louisiana entered into a co-operative agreement with the United States Geological Survey, Washington, D. C. to begin surveying and mapping the State of Louisiana.

The 1937 First Edition Official Map of Louisiana by the Board of Engineers was taken from these quadrangle sheets that had been prepared by the U. S. Geological Survey. As a matter of fact the 1937 Edition of the Louisiana Official Map was actually prepared in Washington by the U. S. Geological Survey in co-operation with the representatives of the Board of State Engineers. Since the quadrangle maps prepared by the U. S. Geological Survey placed a line in the Sabine Pass, Sabine Lake and Sabine River, this same line was carried over on the Official Map of the State of Louisiana. This was not done with any intention on the part of the State of Louisiana to establish any legal boundary between the State of Texas and the State of Louisiana. As a matter of fact, all Official Maps subsequent to 1937 do not show any line in the Sabine Pass, Sabine Lake or Sabine River, but show a line on the west bank of said water bodies as is illustrated by the next Official Map of the year 1943 attached hereto.

It has been long recognized by the Board of State Engineers that there has been and is a legal dispute

over the boundary between the State of Texas and the State of Louisiana.

That while the maps referred to herein, and other maps, have shown lines in the Sabine River, Sabine Lake and Sabine Pass, they have never been, as far as Affiant knows, officially recognized as establishing any legal boundary line between the State of Louisiana and the State of Texas.

/s/ HATLEY N. HARRISON, JR.

SWORN TO AND SUBSCRIBED before me,
Notary Public, at Baton Rouge, Louisiana, on this
15th day of October, 1970.

/s/ ESTHER A. KELLY
Notary Public

No. 36, ORIGINAL

**In the
Supreme Court of the United States**

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

**Before the Honorable
Robert Van Pelt, Special Master**

**AFFIDAVIT IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT FILED BY THE STATE OF
TEXAS**

STATE OF LOUISIANA

Parish of Orleans

KNOW ALL MEN BY THESE PRESENTS, that before me, the undersigned authority, personally came and appeared RICHARD K. YANCEY, who, upon first being duly sworn, did depose and say:

That he is Assistant Director of the Wild Life and Fisheries Commission of the State of Louisiana, which has its domicile at 400 Royal Street, New Orleans, Louisiana.

That he has been associated with the Wild Life and Fisheries Commission in varying capacities for 21 years.

That he is familiar with the records of this Commission pertaining to the reciprocal agreements between the State of Louisiana and the State of Texas relating to fishing and hunting in Sabine Pass, Sabine Lake and Sabine River.

Affiant knows that the Wild Life and Fisheries Commission has co-operated over the years with the similar Commission for the State of Texas in regulating the fishing in Sabine Pass, Sabine Lake and Sabine River, and regulating the hunting in the same area.

That while there have been agreements signed between the State of Texas and the State of Louisiana concerning fishing and hunting in Sabine Pass, Sabine Lake and Sabine River, that it never was the purpose of said agreement to establish any legal boundary between the State of Texas and the State of Louisiana and that this fact was known both to those representing the State of Louisiana and to those representing the State of Texas.

That said agreements were signed for the mutual benefit of both States since it was recognized that the citizens in both States had certain rights in the waters of Sabine Pass, Sabine Lake and Sabine River.

Affiant further states that from his search of the records of the Wild Life and Fisheries Commission that he has been unable to find any documents which purport to establish any legal boundary in Sabine Pass, Sabine Lake and Sabine River between the State of Texas and the State of Louisiana, and that the said Department does not have any authority to establish

any such boundary or to give up any rights of the State of Louisiana.

/s/ RICHARD K. YANCEY

SWORN TO AND SUBSCRIBED before me,
Notary Public, at New Orleans, Louisiana, on this
20th day of October, 1970.

/s/ PETER E. DUFFY
Notary Public

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Supreme Court of the United States**

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

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Robert Van Pelt, Special Master**

**AFFIDAVIT IN OPPOSITION TO MOTION FOR
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TEXAS**

STATE OF LOUISIANA

Parish of East Baton Rouge

BEFORE ME, the undersigned authority, personally came and appeared A. D. JACKSON, Assistant Director, Department of Highways, State of Louisiana, who, upon first being duly sworn, did depose and say:

That he has been an employee of the Department of Highways for 41 years. That the records of the Department of Highways are under his supervision and control.

From these records and from personal knowledge,

Affiant knows that the Department of Highways has entered into various agreements with the State of Texas, through its various Departments, for the construction of bridges across Sabine River, Sabine Lake and Sabine Pass, and that the cost of constructing these structures has been borne by both States on a formula mutually satisfactory to them.

Your Affiant is familiar with the fact that the Department of Highways has issued various maps and drawings on which various lines are shown dividing the State of Texas from the State of Louisiana.

Affiant states that it was never the intention of the Department of Highways, in entering into these various agreements with the State of Texas or the preparing and issuance of the various maps, to establish any legal boundary between the State of Texas and the State of Louisiana. Affiant recognizes that there has been in dispute the location of the boundary between the State of Texas and the State of Louisiana for many years and that it was never the intent of the Department of Highways, nor did it have the authority, to settle any boundary between the State of Texas and the State of Louisiana, and that as far as Affiant knows this matter was thoroughly understood by representatives of the State of Texas.

The policy of the Department of Highways and that of the State of Texas, as far as Affiant knows, was to try to work out mutually satisfactory bridges across the Sabine River, Sabine Lake and Sabine Pass for the mutual benefit of the inhabitants of both States and the public generally.

Affiant is familiar with the fact of the location of signs on some of the bridges across the Sabine River and Sabine Pass, and states that as far as the Department of Highways was concerned these signs were never placed on the bridges with any intent to locate the legal boundary between the State of Texas and the State of Louisiana.

/s/ A. D. JACKSON

SWORN TO AND SUBSCRIBED BEFORE ME,
Notary Public, at Baton Rouge, Louisiana, on this
16th day of October, 1970.

/s/ PHILIP K. JONES
Notary Public

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Supreme Court of the United States**

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

**Before the Honorable
Robert Van Pelt, Special Master**

**AFFIDAVIT IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT FILED BY THE STATE OF
TEXAS**

STATE OF LOUISIANA

Parish of Orleans

BEFORE ME, the undersigned authority, personally came and appeared DR. LYLE S. ST. AMANT, who, upon first being duly sworn, did depose and say:

That he is Assistant Director of the Department of Wild Life and Fisheries, State of Louisiana, and that he is familiar with the records of his office, which are under his supervision and control, and that this affidavit is based on said records and is true to the best of his information and belief.

That he is making this affidavit to be used by the State of Louisiana in opposition to the motion for summary judgment filed by the State of Texas.

That, among other exercises of State jurisdiction and ownership over those portions of Sabine Pass and Sabine Lake west of the center line thereof, the State of Louisiana has leased submerged lands for the purpose of taking and removing clam shells, reef shells, and/or oyster shells which have covered the entire bed and bottom of said bodies of water.

That a search of the records of the Department of Wild Life and Fisheries reflects the following examples of leases covering the entirety of Sabine Pass and Sabine Lake:

a) State Lease to W. T. Burton Co., Inc., dated November 30, 1950, which covers Sabine Lake near Port Arthur, Texas, and from Sabine Pass (Entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers.

b) State Lease to W. T. Burton Co., Inc., dated March 6, 1952, which covers Sabine Lake near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers.

c) State Lease to W. T. Burton Co., Inc., dated September 14, 1954, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, Louisiana.

d) State Lease to W. T. Burton Co., Inc., dated

April 9, 1958, which covers Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana.

e) State Lease to W. T. Burton Co., Inc., dated March 10, 1959, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana.

f) State Lease to W. T. Burton Co., Inc., dated April 29, 1969, which covers Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana, and Calcasieu Lake, sometimes known as Big Lake located in Cameron Parish, Louisiana.

g) State Lease to Lake Charles Dredging & Towing Co., Inc., dated February 25, 1955, covering Sabine Lake, Cameron Parish.

h) State Lease to Lake Charles Dredging & Towing Co., Inc., dated March 8, 1957, covering Sabine Lake, Cameron Parish, La.

i) State Lease to Lake Charles Dredging & Towing Co., Inc., dated January 28, 1959, covering Sabine Pass in the area between Mesquite Point and Light-house Bayou, Cameron Parish, State of Louisiana.

j) State Lease to Lake Charles Dredging & Towing Co., Inc., dated February 10, 1959, covering Sabine Lake, Cameron Parish, State of Louisiana.

k) State Lease to Louis J. Deshotel, dated September 23, 1958, covering Sabine Lake, Parish of Cameron, State of Louisiana.

l) State Lease to Guarisco Construction Co., Inc., dated July 16, 1957, which covers Sabine Lake, Parish of Cameron, State of Louisiana.

m) State Lease to Louisiana Towing & Dredging Co., Inc., dated February 8, 1961, which covers Sabine Lake, Cameron Parish, State of Louisiana.

n) State Lease to Stevens and Co., Inc., dated July 6, 1947, which covers Sabine Lake near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the ~~Sabine~~ and Neches Rivers.

o) State Lease to Bauer-Smith Dredging Co., Inc., dated November 7, 1957, which covers Sabine Lake, Parish of Cameron, State of Louisiana.

p) State Lease to S. A. Smith & Associates, dated June 27, 1960, which covers Sabine Lake, Cameron Parish, State of Louisiana.

q) State Lease to W. T. Burton Co., Inc., dated March 7, 1956, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, Louisiana.

r) State Lease to W. T. Burton Co., Inc., dated February 21, 1957, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana.

s) State Lease to W. T. Burton Co., Inc., dated June 21, 1960, covering Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana.

t) State Lease to Lake Charles Dredging & Towing Co., Inc., dated February 25, 1956, which covers Sabine Lake, Cameron Parish, La.

u) State Lease to Lake Charles Dredging & Towing Co., Inc., dated March 19, 1958, covering Sabine Lake, Cameron Parish, State of Louisiana.

v) State Lease to W. D. Haden-Company of Galveston, Texas, dated March 13, 1933, covering Sabine Lake near Port Arthur, Sabine, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers.

w) State Lease to W. D. Haden Company of Galveston, Texas, dated March 13, 1935, covering Sabine Lake near Port Arthur, Sabine, and from Sabine Pass (entrance to Sabine Lake), to the mouths of the Sabine and Neches Rivers.

x) State Lease to W. D. Haden Company of Galveston, Texas, dated March 13, 1937, covering Sabine Lake near Port Arthur, Sabine, and from Sabine Pass (entrance to Sabine Lake), to the mouths of the Sabine and Neches Rivers.

y) State Lease to Smith Bros. Dredging Co., dated February 10, 1958, which covers Louisiana side of Sabine Lake, Parish of Cameron, State of La.

That affiant has always considered the boundary between the State of Texas and the State of Louisiana as being on the west bank of the Sabine Pass, Lake, and River, although affiant is aware that this boundary has been in dispute for many years. Attached hereto and made part hereof are copies of the leases referred to hereinabove.

/s/ LYLE S. ST. AMANT

SWORN TO AND SUBSCRIBED before me,
Notary Public, at New Orleans, Louisiana, on this
21 day of October, 1970.

/s/ PETER E. DUFFY
Notary Public

No. 36, ORIGINAL

**In the
Supreme Court of the United States**

STATE OF TEXAS,

Plaintiff,

v.

STATE OF LOUISIANA,

Defendant.

**Before the Honorable
Robert Van Pelt, Special Master**

**AFFIDAVIT IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT FILED BY THE STATE OF
TEXAS**

STATE OF LOUISIANA

Parish of East Baton Rouge

BEFORE ME, the undersigned authority, personally came and appeared ORY G. PORET, who, upon first being duly sworn, did depose and say:

That he is Deputy Register of the State Land Office, State of Louisiana, and that he is familiar with the records of his office, which are under his supervision and control, and that this affidavit is based on said records and is true to the best of his information and belief.

That he is making this affidavit to be used by the State of Louisiana in opposition to the motion for summary judgment filed by the State of Texas.

That, among other exercises of State jurisdiction and ownership over those portions of Sabine Pass, Sabine Lake and the Sabine River west of the center line thereof, the State of Louisiana has leased submerged lands for the production of oil, gas, and other minerals and made right-of-way grants which have covered the entire bed and bottom of said bodies of water.

That, at various times subsequent to Texas' admission to the Union, the State of Louisiana, acting through the appropriate agencies, has advertised for lease and executed oil and gas leases on certain tracts within the western half of Sabine Pass, Sabine Lake and Sabine River. These leases were awarded to the highest bidder in a sealed bid sale after public advertisement. The search of the records of the appropriate State agencies reflect the following examples of leases advertised on lands within the western half of Sabine Pass, Sabine Lake and Sabine River:

a) April 19, 1933. State Lease No. 272 of approximately 1500 acres to C. A. King covering tract situated in Calcasieu Parish, Louisiana, and extending to the west side of the Sabine River for \$2,375.00.

b) October 22, 1935. State Lease No. 326 to William T. Burton covering tract in Calcasieu Parish, Louisiana, and extending to the west side of the Sabine River for \$500.00.

c) April 21, 1938. State Lease No. 376 to Mr. Tom C. Igoe covering a tract in DeSoto Parish, which extends to the west side of the Sabine River for \$500.00.

d) June 3, 1949. State Lease No. 1717 to Ohio Oil Co., covering Tract No. 4390 situated in Calcasieu and Cameron Parishes, Louisiana, which extends to the west side of the Sabine River and estimated to contain 736 acres for \$11,040.00.

e) July 12, 1950. State Lease No. 1834 to Mid-states Oil Corp., covering Tract No. 4563 in Calcasieu Parish, Louisiana, which extends, at one point, to the west side of the Sabine River and estimated to contain approximately 225 acres for \$2,587.50.

f) July 12, 1950. State Lease No. 1842 to Lincoln Frost, Jr., covering the North 500 acres of Tract No. 4579 in Beauregard Parish, Louisiana, which extends to the west side of the Sabine River and estimated to contain approximately 700 acres for \$5,057.79.

g) October 8, 1951. State Lease No. 2048 to Atlantic Refining Co., covering Tract No. 4930 in Beauregard Parish, Louisiana, which extends to the west side of the Sabine River and estimated to contain approximately 260 acres for \$15,600.00.

h) June 16, 1955. State Lease No. 2732 to Houston Oil Co. of Texas (25.5% interest), Sinclair Oil & Gas Co. (25.5% interest) and Stanolind Oil and Gas Co. (49% interest), covering Tract No. 6050 in Cameron Parish, Louisiana, which extends to the west

side of the Sabine Pass and estimated to contain 742.97 acres for \$76,191.57.

i) December 15, 1955. State Lease No. 2874 to C. C. Steinberger, Jr., covering Tract No. 6282 in Cameron Parish, Louisiana, which extends to a point east of the center line of Sabine Lake or Pass and contains approximately 310 acres for \$8,000.00.

j) March 4, 1959. State Lease No. 3485 to Sun Oil Co., covering Tract No. 7432 situated in Sabine Parish, Louisiana, which extends to the west side of the Sabine River and which is estimated to contain approximately 110 acres for \$1,326.00.

k) March 4, 1959. State Lease No. 3459 to Shell Oil Company, covering Tract No. 7384 in Cameron Parish, Louisiana, which extends beyond the center line of Sabine Lake and is estimated to contain approximately 2450 acres for \$294,000.00.

l) March 4, 1959. State Lease No. 3461 to The California Company, covering Tract No. 7386 in Cameron Parish, Louisiana, which extends to a point beyond the center line of Sabine Lake, and is estimated to contain approximately 4520 acres for \$640,256.00.

m) March 4, 1959. State Lease No. 3463 to The California Co., covering Tract No. 7388 in Cameron Parish, Louisiana, which extends to a point beyond the center line of Sabine Lake and is estimated to contain approximately 4900 acres for \$205,434.00.

n) September 26, 1959. State Lease No. 3565 to The California Company, covering Tract No. 7541 in Cameron Parish, Louisiana, which extends beyond the

center line of Sabine Lake and estimated to contain approximately 4350 acres for \$335,116.00.

o) September 26, 1959. State Lease No. 3561 to The Atlantic Refining Co., covering Tract No. 7534, which extends to the west side of the Sabine River and is estimated to contain approximately 53 acres for \$10,610.00. This property is situated in Beauregard Parish, Louisiana.

p) April 23, 1962. State Lease No. 3874 to Sun Oil Co., covering Tract No. 8167, situated in Calcasieu Parish, Louisiana, which extends to the west side of the Sabine River and estimated to contain approximately 176 acres for \$5,473.60.

That, furthermore, the State of Louisiana has, on numerous occasions granted rights-of-way for pipeline construction, maintenance, etc., and other purposes across the entirety or, at least, to a point which extends to a point west of the center line of Sabine Pass, Lake, and/or River. A search of the records of the appropriate State agencies reflect the following examples of right-of-way grants on lands within the western half of Sabine Pass, Lake, and/or River:

1) State Right-of-Way dated July 9, 1929 granting to H. L. McKee a right-of-way for the construction of a bridge and approaches thereto, across the entirety of Sabine Lake, pursuant to Act 215 of 1916 and Public Law (U.S.) 432, 70th Congress, dated May 18, 1928.

2) State Right-of-Way No. 224, dated August 24, 1962 to Colonial Pipeline Company covering the

Sabine River and other bodies of water for the operation of a pipeline for the transportation of oil, gas, and other mineral products across the entire Sabine River for the sum of \$1,491.00.

3) State Right-of-Way No. 230, dated August 24, 1962 to Transcontinental Gas Pipe Line Corporation covering Sabine River for the operation of pipeline for the transportation of oil, gas, and other minerals across the entire Sabine River for the sum of \$78.18.

4) State Right-of-Way No. 431, dated July 15, 1964 to Tennessee Gas Transmission Co. for the operation of a pipeline for the transportation of oil, gas and other minerals across the Sabine River, near the town of Columbus, Sabine Parish, Louisiana, for the sum of \$184.00.

5) State Right-of-Way No. 741, dated December 13, 1966 to Sabine Pipe Line Co. for the operation of a pipeline for the transportation of oil, gas and other minerals "across that portion of the Sabine River lying, within the boundary of the State of Louisiana in Cameron Parish, Louisiana . . ." for the sum of \$112.00.

6) State Right-of-Way No. 742, dated December 13, 1966 to Black Lake Pipe Line Company for the operation of a pipeline for the transportation of oil, gas and other minerals across Sabine River in Vernon Parish, Louisiana, for the sum of \$81.00.

7) State Right-of-Way No. 743, dated December 7, 1966 to Union Carbide Corporation for the opera-

tion of a pipeline for the transportation of oil, gas, and other minerals across the "Westhalf (W/2) of the Sabine River located in Section 33, Township 10 South, Range 13 West", Calcasieu Parish, Louisiana, for \$989.10.

8) State Right-of-Way No. 960, dated June 4, 1968 to Big Three Pipeline Co., a division of Big Three Industrial Gas & Equipment Co. for the operation of a pipeline for the transportation of oil, gas, and other minerals across the Sabine River approximately 100' north of the Southern Pacific Railroad bridge, four miles north of Orange, Texas, from a point in Calcasieu Parish, Louisiana, for the sum of \$113.43.

That affiant attaches hereto and makes part hereof a copy of each of the oil and gas leases and right-of-way grants hereinabove referred to.

Affiant further states that, as far as he can determine from a study of the records in his office, Louisiana has maintained that its boundaries are in accordance with the Treaty of 1819 between the United States and Spain and extends to the west bank of Sabine Pass, Lake, and River to where the 32nd degree of North latitude strikes the west bank of Sabine River, then due North to the 33rd degree of North latitude, and, furthermore affiant has found no records in his office which would indicate that Louisiana has ever relinquished title to lands owned by it to said boundary. That affiant has not found in said records any claim by the United States to the area in dispute in this litigation and affiant has found from his rec-

ords that the landward portion of said boundary has not been in dispute.

/s/ ORY G. PORET

SWORN TO AND SUBSCRIBED before me,
Notary, at Baton Rouge, Louisiana, on this 23rd day
of October, 1970.

/s/ ESTHER A. KELLY
Notary Public

STATE OF LOUISIANA
Parish of Orleans

BEFORE ME, the undersigned authority, a Notary Public duly commissioned and qualified in and for the aforesaid Parish and State,

PERSONALLY CAME AND APPEARED:

JACOB H. MORRISON, of age and a resident of the Parish of Orleans, Louisiana who, after having been duly sworn did depose and say that:

He was acting as Special Assistant Attorney General in 1941 and became interested in the question of the correct location of the boundary between the States of Louisiana and Texas. Sam H. Jones was governor and Eugene Stanley was Attorney General at the time.

Deponent annexes hereto and makes part hereof a copy of a letter addressed to the Governor of Texas which letter was prepared by him and signed by Governor Jones, Attorney General Stanley and himself. The reason the date does not appear on the copy is that said letter was drafted by him and then mailed from his office in New Orleans to Governor Jones in Baton Rouge, the state capitol. It was signed by At-

torney General Stanley and Governor Jones in Baton Rouge on or about November 27, 1941; and Deponent is informed and believes that the said letter was promptly mailed to the Governor of Texas.

Deponent further says that a letter was received by Governor Jones from Honorable Bascom Giles, Commissioner of the General Land Office of Texas dated November 25th 1941, copy of which is annexed hereto and made part hereof. Said letter was referred to deponent for reply by Governor Jones.

Deponent further says that in response to said letter, a reply was drafted by him in New Orleans and mailed to Governor Jones in Baton Rouge for his signature. The copy is annexed. Governor Jones wrote deponent on December 17, 1941 advising him that he had signed the letter and mailed it to Mr. Giles about December 17, 1941. A copy of said letter is annexed hereto and made part hereof.

Deponent annexes hereto and makes part hereof the copy of letter dated January 5, 1942, which was sent to Senator Tom Connally of Texas by Mr. Fred W. Johnson, Assistant Commissioner of the General Land Office of the United States, Department of the Interior. A copy of this letter was referred to deponent in the course of his activity in connection with the boundary dispute herein involved.

/s/ JACOB H. MORRISON

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 16th DAY OF OCTOBER, 1970.

/s/ JAMES G. DERBES
Notary Public

STATE OF LOUISIANA
Parish of Calcasieu

BEFORE ME, the undersigned authority, a Notary Public duly commissioned and qualified in and for the aforesaid Parish and State,

PERSONALLY CAME AND APPEARED:

HONORABLE SAM HOUSTON JONES, of age and a resident of the Parish of Calcasieu, Louisiana who, after having been duly sworn did depose and say that:

He was Governor of the State of Louisiana in 1941 and was interested in the question of the correct location of the boundary between the States of Louisiana and Texas. Eugene Stanley was Attorney General at the time; and Jacob H. Morrison was acting as a Special Assistant Attorney General in connection with said matter.

Deponent annexes hereto and makes part hereof a copy of a letter addressed to the Governor of Texas which letter was signed by him, Attorney General Stanley and Jacob H. Morrison. It was mailed on or about November 27, 1941. The reason the date does not appear on the copy is that said letter was drafted by Jacob H. Morrison and mailed from his office in New Orleans to my office in Baton Rouge, the state capitol. It was signed by Attorney General Stanly and myself in Baton Rouge on or about November 27, 1941; and was promptly mailed to the Governor of Texas.

Deponent further says that he received from Hon-

orable Bascom Giles, Commissioner of the General Land Office of Texas a letter dated November 25th, 1941, copy of which is annexed hereto and made part hereof.

Deponent further says that in response to said letter, a reply was drafted by Jacob H. Morrison and mailed to him in Baton Rouge for his signature. He signed said letter and mailed it to Mr. Giles on or about December 17, 1941. The reason he knows this is that he wrote Mr. Morrison on December 17, 1941 advising him of this fact. A copy of said letter is annexed hereto and made part hereof.

SAM HOUSTON JONES

Sworn to and subscribed before me this 30th day of September 1970.

/s/ DOROTHY BRASWELL
Notary Public

The Honorable Governor of the State of Texas,
State Capitol Building,
Austin, Texas.

Dear Sir:

I am writing you in the interest of setting at rest all doubts that may exist as to the correct boundary between the states of Louisiana and Texas. The true boundary between our respective states is the western bank of the continuous body of water known as Sabine Pass, Sabine Lake and Sabine River from the Gulf up to the 32nd degree of latitude, and thence due north to the Louisiana-Arkansas boundary.

Some confusion has been created by the erroneous idea entertained in some quarters that the *middle* of Sabine Pass, Lake and River is the right boundary. This has no basis in law or fact.

In order that you may have before you for ready reference the pertinent statutes and decisions on this question, I call your attention to the following:—

By the treaty of February 22, 1819 between the United States of America and the King of Spain (8 U. S. Statutes at Large 252), the limits between the United States of America and the then Territories of the King of Spain in North America were fixed at a line beginning on the Gulf of Mexico at the mouth of the River Sabine, and continuing north along the western bank of that river (Sabine Pass, Sabine Lake and Sabine River proper) to the 32nd degree of latitude. The boundary then followed a line running due north from the last named point to the southern bank of Red River.

By the Treaty of Limits, dated January 12, 1828, between the United States of America and the United Mexican States, the same boundary was adopted (see 8 Statutes at Large, Page 372). By an act dated December 19, 1836, the Republic of Texas ratified the same boundary as that prescribed theretofore in the treaties of February 22, 1819 (between Spain and the U. S.) and January 12, 1828 (between Mexico and the U. S.).

By an act of Congress of July 5, 1848 (U. S. Statutes at Large, 30th Congress (1848), First Session,

Chapter 94), the United States sought to extend the eastern boundary of the State of Texas so as to include one-half of Sabine Pass, Sabine Lake and Sabine River up to the 32nd degree of latitude. This act is clearly unconstitutional under the doctrine of *Louisiana vs. Mississippi*, 202 U. S. 1; 26 Sup. Ct. 408; decided in 1906.

In the several cases involved in the litigation between the states of Oklahoma and Texas, the Supreme Court of the United States held definitely that the boundaries as delineated by the Treaty of 1819 between Spain and the United States were effective and controlling. Accordingly, the Supreme Court held that the western bank of Sabine Pass, Sabine Lake and Sabine River and the southern bank of Red River were the correct boundaries.

To this effect, see:—

United States v. Texas, 162 U. S. 1; 16 Supreme Court 725;

Oklahoma v. Texas, 256 U. S. 70; 41 Supreme Court 420;

Oklahoma v. Texas, 256 U. S. 602; 41 Supreme Court 539;

Oklahoma v. Texas, 258 U. S. 574;

Oklahoma v. Texas, 260 U. S. 606;

United States v. Choctaw & Chickasaw Nations, 179 U. S. 494.

The boundary line between the State of Louisiana

and the State of Texas was actually located, laid out and marked upon the earth by commissioners appointed in 1839 respectively by the United States and the then Republic of Texas. The limits as established by the successive treaties of 1819, 1828 and 1836 were strictly adhered to. The commissioners completed their work in 1841.

You have probably observed in the press some comment on an alleged error in the survey establishing that portion of the boundary running from the 32nd parallel (where the Sabine ceases to be the boundary) up to the Arkansas-Louisiana Line (the 33rd parallel of north latitude). I am not in a position to discuss the engineering phases of the matter. What I can and do say is that, regardless of any error that may have been committed in running this portion of the line (which error I do not admit but expressly disclaim), the actual boundary as physically laid out on the ground and as adhered to for the past century by the citizens of both states adjoining it would govern and control.

As Governor of the State of Louisiana, and under the authority in me vested by the Constitution and Statutes of this State, I hereby make formal demand for the recognition by the State of Texas, as the true and correct boundary between our respective states, of the western bank of Sabine Pass, Sabine River and Sabine Lake up to the 32nd parallel, and of the line between the 32nd and 33rd parallel of north latitude as established by the joint commission in 1839-41 and as adhered to by the citizens of both states adjoining it.

The Attorney General joins me in this letter, as will appear by his official signature hereto.

Yours respectfully,

/s/ SAM H. JONES
Governor, State of Louisiana

/s/ EUGENE STANLEY
Attorney General, State of Louisiana

/s/ JACOB H. MORRISON
Special Assistant to the Attorney
General of the State of Louisiana

GENERAL LAND OFFICE
State of Texas
Austin

BASCOM GILES, Commissioner
Alvis Vandygriff, Chief Clerk

November 25, 1941

Honorable Sam Jones, Governor
State of Louisiana
Baton Rouge, La.

Dear Governor Jones:

It has come to my attention that you are contending that possibly the State of Louisiana has title to all of the Sabine River bed. The United States Department of the Interior, by letter dated June 4, 1937, advised the General Land Office of the State of Texas that the center of the Sabine River from its mouth to the 32° of latitude was the boundary line between Texas and Louisiana. Since it is my duty to administer and conserve the public lands of the State of Texas, I

have made a rather extensive investigation into the extent of your claim. This investigation convinces me that the State of Texas has title to the west one-half of the Sabine River bed exclusive of the islands therein.

It is possible that you have overlooked the following facts:

1. The west boundary of Louisiana was fixed by the Act of April 8, 1812, admitting said State into the Union and is described as follows:

"Beginning at the mouth of the River Sabine; thence, by a line drawn along the middle of said River including all islands to the 32° of latitude; thence due north to the northernmost part of the 33° of north latitude." (2 Stat. 701)

2. On February 22, 1819, after Louisiana had been admitted to the Union, the United States entered into a treaty with Spain to fix the boundary line between the Spanish territory that is now Texas and the United States. This treaty fixes the boundary line of the United States at that time as follows:

"Beginning at the mouth of the River Sabine in the sea, continuing north along the western bank of that River to the 32° of latitude; thence due north to the 33° of latitude." (8 Stat. 252)

3. Mexico, the Republic of Texas, and the State of Texas, who succeeded Spain as sovereign of the lands to the west of the Sabine River, each ratified the boundary as set out in the Treaty of 1819. (8 Stat., 372; 8 Stat., 511.)

4. On July 5, 1848, after Texas was admitted to the Union, the Congress of the United States realizing that it had never relinquished the title to the west one-half of the Sabine River which it had obtained from Spain in 1819, gave Texas permission to extend its eastern boundary to the middle of the Sabine River from its mouth as far north as the 32° of latitude. (9 Stat., 245)

5. Texas acted immediately to take advantage of this permission and on November 24, 1849, the Legislature of the State of Texas passed an act extending the limits of the State of Texas to the center of the Sabine River from its mouth to where the River intersects the 32° of latitude. (Act of Nov. 24, 1849, 3 Gam. Laws of Texas. Pg. 442).

It can readily be seen that the State of Louisiana is bound by the limits placed on it when it was admitted into the Union in 1812. Its boundaries then did not extend beyond the middle of the Sabine River and this boundary has never been changed. The west one-half of this River which you have claimed remained the property of the United States of America until it so graciously consented for the State of Texas to extend its boundaries and include this area. For more detailed information I refer you to Geological Survey Bulletin 817.

I would like to point out, however, that my investigation into the boundary line between our two States has revealed an interesting situation between the 32° of latitude and the 33° of latitude. It appears that there is a strip approximately 150 feet in width and 70

miles long between the marked boundary of Texas of 1838 and the actual boundary of Louisiana as fixed in 1812, which is not owned by the State of Louisiana but is quite possibly owned by the State of Texas. This strip extends from Joaquin, Texas, opposite Logansport, Louisiana, to the Arkansas-Louisiana line and contains about 1300 acres.

This situation arises from the fact that in 1838 the Republic of Texas and the United States of America entered into a convention by which the boundary between the Republic of Texas and the United States was affirmed as being that agreed upon between Spain and the United States in 1819. Pursuant to this Convention of 1838 a Boundary Commission was appointed between the two Nations and the boundary as then existing was surveyed and marked on the ground. This line ran along the western bank of the Sabine River to the 32° of latitude, and then turned due north. Since the boundary of Louisiana was previously fixed as running up the middle of Sabine River to the 32° of latitude, thence due north to the northernmost part of the 33° of latitude, it is evident that the line as surveyed on the ground in 1838 did not and could not coincide with the boundary of the State of Louisiana, as fixed in 1812, by the width of one-half of the River.

To illustrate this point, I am enclosing a blue print of a sketch prepared by this office based on the original maps filed here by the Boundary Commission of 1838. You can at once see that there is a discrepancy between the Louisiana boundary line running due north from the center of the Sabine River at the 32° parallel and

the boundary of Texas as surveyed and marked running north from the western bank of the Sabine River. Conceding that the Sabine River is only 300 feet wide at the point it intersects the 32° of latitude, the strip between the boundary line of Louisiana and the old surveyed boundary line of 1838 would be approximately 150 feet wide. I would like to point out, however, as reflected by the original surveyor's maps, that it is quite possible that the Sabine River is much wider at this point because of overflows and swampy land which might increase this strip to as much as a mile.

It is true that the Congress of the United States did not expressly mention this strip when it authorized Texas to take over the west one-half of the Sabine River, but we feel that they intended that the same be done since it follows as a natural corollary of moving the boundary of Texas from the west bank of the Sabine River to the middle of that River.

Because of the strong implications that this territory belongs to the State of Texas, I have examined all of the information I have been able to obtain on this matter and have transmitted it to Senators Tom Connally and W. Lee O'Daniel of Texas so that they may take whatever action they think expedient to protect any rights the State of Texas might have in this strip.

In addition to the above mentioned blue print, I am enclosing the following instruments:

1. Certified photostatic copy of Sheet No. 1 of the map of a part of the boundary between the Republic of Texas and the United States of America drawn from notes of survey made by the Joint

Commission under the Convention of the 25th of April, 1838.

2. Certified photostatic copy of Plan B, Sheet No. 3, of the above named survey.

I am sure that you have given this matter much study, and I will be happy to have the benefit of your opinion thereon.

Sincerely yours

(Sgd.) Bascom Giles
BASCOM GILES, COMMISSIONER
OF THE GENERAL LAND OFFICE

Encls.
Giles:rlw

Honorable Bascom D. Giles,
Commissioner of the General Land Office
Austin, Texas.

Dear Commissioner Giles:

Your letter of November 25th was duly received and I hope you will pardon the delay in answering it. I have just returned from an absence from the State, and additional delay was occasioned by the fact that I wished to submit the matter to Attorney General Eugene Stanley for his views and conclusions.

Let me say that I appreciate the courteous, careful and complete summation of your state's position in this matter as set forth by you. I freely acknowledge that you have done a thorough and able job, both in research and in presentation of the material on this

subject from your point of view. However, my original opinion has not been changed, modified or varied by the citations and forceful arguments advanced.

Needless to say, we are and have been well aware of the Act of Congress admitting Louisiana into the Union, dated April 8, 1812 (2 Statutes at Large 701, Chapter 50), giving the middle of the Sabine as the western boundary. The Treaty of February 22, 1819 between the United States and Spain (8 Statutes at Large 252) is the principal genesis of Louisiana's right and title to the entire bed of the Sabine water system from the Gulf of Mexico to the 32nd degree of north latitude, and to the land boundary from the point where the 32nd parallel meets the Sabine's west bank north to the 33rd parallel. I do not think there can be any dispute as to the context of the various statutes and treaties cited by you, which we were actually aware of. Our differences arise over the effect to be given these statutes and treaties and the proper construction to be placed upon them.

In the first place, we believe that the Act of Congress of July 5, 1848 (Chapter 94, 30th Congress—9 Statutes 245), which is your main reliance, is unconstitutional, null and void. The reason is that Louisiana was the beneficiary of the boundary agreement between the United States of America and the King of Spain, as set forth in the Treaty of February 22, 1819, the actual line having been marked out by a joint commission under the Convention of 1838 between the Texas Republic and the United States. We disagree entirely with your theory that the United States of

America held title to a thin strip of water comprising the western half of the Sabine from the Gulf to the 32nd parallel and a thin strip of land equivalent to one-half of the width of the Sabine from the 32nd to the 33rd parallel (the Louisiana-Arkansas line). We believe that the only possible effect of the Treaty of 1819 was to extend the western boundary of the State of Louisiana between the Gulf and the 33rd parallel by half of the width of the Sabine River. Not only is this true as a legal proposition inherent in the fundamental law governing the relations between the United States of America and the individual states comprising its Federal Union; but certain actions of the United States authorities, as hereinafter related in greater detail, point to this as an inevitable conclusion. Consequently, when Congress, on July 5, 1848, permitted the Texas Legislature to extend the eastern boundary of Texas to the center of the Sabine River, it had no right or authority to do so, and it gave away something that it did not actually own. As a corollary, the act of Texas of November 24, 1849 was negatory, null and void.

The western border of the "Louisiana Purchase" was, as you know, a matter of controversy for many years between Spain and the United States, during the course of which various states were admitted into the American Union and other changes took place in its component structure. Spain had always contended that the proper boundary between its lands on the North American continent and those of the United States of America was the Atchafalaya water system. Surely,

if Spain had finally secured the enforcement of its conception of the proper boundary in 1819 and the border had been placed by the Treaty on the Atchafalaya River instead of the western bank of the Sabine, it cannot be gainsaid that the State of Louisiana's western boundary (as originally fixed in 1812) would have ipso facto been changed to conform. Furthermore, there is no showing that there was any reason, intent or purpose for the United States (as distinguished from the individual states that comprised its Federal Union) to establish a thin strip of water and land as a "buffer territory" between one of its component states—Louisiana—and its neighbor on the west—the Territory of the Spanish Kingdom. Any argument to the contrary appears even more fallacious, when it is recalled that 30 years elapsed between the Treaty of 1819 and the Act of Congress of 1848 purporting to consent to Texas having half the Sabine, during which time Mexico supplanted Spain and the Republic of Texas, in turn, Mexico; and finally Texas was admitted as a state several years prior to the date of said Act.

Our argument on this score is reinforced by the fact that the Overton Commission, which actually ran the boundary line in the period between 1839 and 1841, physically established it on the western bank of the Sabine water system up to the 32nd parallel and, from that point, north to the 33rd parallel of latitude. This latter portion of the boundary (from approximately Logansport, Louisiana to the Arkansas-Louisiana line) has always, as a matter of public knowledge and

notorious opinion, been held to be the boundary between the states of Louisiana and Texas. No better illustration of this appears than the map of that portion of the boundary between the Republic of Texas and the State of Louisiana, a certified copy of which you sent me with your letter of November 25th. You will note on that very map that the territory to the east of the line is referred to as "State of Louisiana", and there is not the slightest intimation that the commissioners representing the United States and the Republic of Texas intended to project a narrow strip 150 feet wide running between the 32nd and 33rd parallels of north latitude and reserve it as federal territory. From all this, I am constrained to disagree with your observations on this question and the interpretation that you place on the Treaty of 1819 and the Act of Congress of 1848.

If the Sabine was, as stated by you, possibly wider in 1819 than it is today, this would redound to the benefit of the State of Louisiana. Whatever was the western bank at the time of the Treaty of 1819 would be the proper boundary, regardless of any shrinkage or expansion in the actual water level of the stream itself. In closing, I wish to point out that the land portion of the boundary from the 32nd to the 33rd parallel has been acquiesced in for 100 years or more by both the State of Louisiana and the State of Texas. Certainly this is true from and after the physical location of the line on the ground by the joint commission acting under the Convention of April 25, 1838. I know of no instance in which the United States of America has

claimed that any part of this boundary, land or water, is federal territory. Certainly it has never exercised any right of dominion over said territory; has collected no taxes therefrom, nor has it used same for any general, public, or federal purpose within the intent and under the requirements of the Constitution of the United States.

The exact opposite is true insofar as the State of Louisiana is concerned. The recognized western boundary has governed the actions of our citizens in the payment of taxes and the exercise of civil and original jurisdiction over the land adjacent to said boundary.

Lastly, I call your attention to the fact that in the Act of Texas of May 2, 1882 (Chapter XI—General Laws of Texas, 1882) and the Act of Congress of January 31, 1885 (Chapter 47, Second Session, 48th Congress) there is a recognition by both the State of Texas and the United States that the western bank of the Sabine from the Gulf to the 32nd degree of latitude, and thence due north to the 33rd degree, is the correct eastern boundary of Texas. While I do not contend that this alone is conclusive, it is undoubtedly a factor favorable to our contentions and adverse to yours.

For the foregoing reasons, I regret that I cannot agree with the contentions advanced in your letter of November 25th. I am asking Attorney General Stanley to prepare a formal exposition of the claims and demands of this State, of which you will be advised in due course.

Yours sincerely,
/s/ SAM H. JONES

COPY

NO. 36, ORIGINAL

Supreme Court, U.S.

FILED

DEC 11 1970

E. ROBERT SEAVER, CLERK

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OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff

v.

THE STATE OF LOUISIANA,

Defendant

BEFORE THE HONORABLE
ROBERT VAN PELT, SPECIAL MASTER,
ON PLAINTIFF'S MOTION FOR JUDGMENT

PLAINTIFF'S REPLY BRIEF

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PLAINTIFF'S REPLY BRIEF

INTRODUCTORY STATEMENT

In the Reply Brief filed by the State of Louisiana, Defendant attacks the affirmative case set forth in Part I of Plaintiff's Brief in Support of the Motion for Judgment, using a subject title outline rather than specifically countering the points in the order presented in the Texas brief. However, the Louisiana brief adequately and appropriately narrows the basic issue in this case to whether the western half of Sabine Pass, Sabine Lake and Sabine River belonged to the United States or to the State of Louisiana on July 5, 1848, when Congress gave consent for the State of Texas to extend its eastern boundary so as to include such area.

If it is concluded as a matter of law that the western half of the Sabine was owned by and subject to the exclusive jurisdiction of the United States on that date, this will dispose of all of Louisiana's additional and alternative defenses including the question of whether the boundary is in the geographic or thalweg middle of the streams.

Since the Louisiana brief does not contain any argument that the Master should hear witnesses before making his findings, it is assumed that Defendant has abandoned its former contention in this regard and that the issues are ripe for determination on Plaintiff's Motion for Judgment.

In this brief Plaintiff will state its points and present its rebuttal in the same sequence that Defendant has made its arguments, separating and preceding the points with the subject title used in the Louisiana brief. However, at the outset, Plaintiff will reply to some of the general contentions and inferences made in the Louisiana brief with reference to the area included in this controversy as distinguished from the area not so included.

AREA INCLUDED IN THIS CONTROVERSY

For convenience and in order to avoid repetition, both parties have made it clear that their general use of the term "Sabine River" includes Sabine Pass and Sabine Lake. However, in its repeated references to the narrow width of the area in controversy, Louisiana has completely ignored Sabine Pass, which has an average width of 3600 feet, and Sabine Lake, which has an average width of 34,000 feet in the major portion of its 20-mile length. At least six times Louisiana refers to the area in controversy as only "a 150-foot strip of water." (See Louisiana's Reply Brief, 3, 13,

15, 16, 24 and 44). Apparently, the reason for minimizing the width of the area is to support Defendant's contention that the United States could not have intended to retain title and jurisdiction over such "a slender strip of water." (Def. Br. 13) Actually, the greater area in controversy is in the western half of Sabine Lake, which comprises 30,727 acres, as compared with 4,000 acres in the western half of the River, and 1010 acres in the western half of the Pass. See affidavit of R. C. Wisdom, Director of the Surveying Division, General Land Office of Texas, filed herewith as Item 1 in Plaintiff's rebuttal Exhibit G.

Thus, the western half of Sabine Lake, a wide and extensive body of shallow water averaging 2 to 8 feet in depth, covers over 6/7ths of the submerged land involved in this case. It would have been reasonable for Congress to have assumed in 1812 and 1849 that submerged lands along the shore could be reclaimed in the manner that has in fact since occurred. Plaintiff's original brief, 44-45, and Exhibit A, 46-47, Exhibit B, 69-75, and Exhibit E, 68-9, show that, under grant from the State of Texas, the City of Port Arthur has reclaimed and built by land-fills an 18-mile island comprising more than 3,000 acres of land that were formerly submerged by the waters of Sabine Lake; that the City, Jefferson County, Texas, and the United States Government have spent large sums of money in the construction of roads and bridges to and on this island; and that it now contains a golf course, marina, stadium, and the local headquarters buildings for the U. S. Corps of Engineers, the U. S. Army Reserve Training Center, and the U. S. Navy and Marine Reserve Training Center, all under grants or leases from the State of Texas or the City of Port Arthur. These exhibits also show that by agreement with the U. S.

Corps of Engineers another 5,000 acres are being reclaimed by the dredging of land-fills in the western half of Sabine Lake, and the levees for these fills are shown in the picture of Pleasure Island opposite p. 45 of Plaintiff's main brief.' See also Item 2 of Plaintiff's Exhibit G filed herewith.

Obviously, more than water was involved when this boundary was fixed in the geographic middle of Sabine River. The submerged lands beneath navigable waters within the territories of the United States were originally held in trust for future states, and the title to such submerged lands within the boundaries of a state became vested in the state as an incident of state sovereignty. *Pollard's Lessee v. Hagan*, 3 Howard 212 (1845). See Texas' main brief, 35-36, for further discussion of this point. It is apparent that except for the value of the land and minerals beneath these waters Louisiana probably would have continued to recognize without question that its boundary included only the eastern half of the Sabine, as it did from 1812 to at least 1941.

AREA NOT IN CONTROVERSY

It was thought that the land boundary line north of the Sabine had been eliminated from this controversy by the stipulation in which it was agreed that the eastern land boundary of Texas is as it was established on the ground in 1841 by the Joint Commission appointed by the United States and the Republic of Texas. However, Louisiana devotes much of its brief

'All citations to pages in Plaintiff's original Brief in Support of Motion for Judgment refer to the reprinted copy of this brief filed in compliance with type sizes required by the Rules of the Supreme Court. The brief is also referred to herein as Plaintiff's "main brief" and in abbreviation as "Plf.Br.".

and all of its Exhibit G to this boundary and its ownership of the land adjacent thereto.

If this 1841 line was actually run north from a true "west" bank (instead of a southwest bank) of the Sabine, it would of course be slightly west of a parallel line commencing in the geographic middle of the River and would have resulted in a long narrow strip of Federal land between these parallel lines. Plaintiff's position throughout this case has been that if any such theoretical strip ever existed, jurisdiction and ownership of it was a matter between the United States and Louisiana, and in no event is it claimed by Texas.'

In an obvious attempt to establish a premise from which to argue its claim to the western half of the Sabine, Louisiana now embraces the theory that such a Federal strip once existed north of the Sabine and that Louisiana acquired it by reason of the Treaty of 1819. The Louisiana brief, 16, says: "She got it—and this is our basic contention—through the medium of the Adams-de Onis Treaty of 1819," and continues "It follows logically that, if Louisiana was the beneficiary of this narrow 150-foot wide land strip under the aegis of the Adams-de Onis Treaty of 1819, she was also the beneficiary of the 150-foot wide water strip from the Gulf to the 32nd parallel by virtue of the same treaty."

Louisiana's basic hypothesis is incorrect, and therefore its postulation is without merit. Louisiana received no title to or jurisdiction over any land north of the

'It is true that a former Texas Land Commissioner asserted such a claim in 1941, but this lasted only about as long as the assertion in the same year by Louisiana Governor Sam Jones of title to the west bank of the Sabine. In neither instance were their assertions adopted by their State Legislatures or pursued to litigation or occupancy against the other State.

Sabine River under the 1819 Treaty. On the contrary, by its own undisputed proof in Defendant's Exhibit G, Louisiana obtained title to the unsold Federal lands adjacent to the Texas eastern land boundary line by grants from the United States Government under the Swamp and Overflow Lands Act of March 2, 1849 (9 Stat. 352), after its jurisdiction over the area had been recognized and acquiesced in by the United States Government's resurvey of such line as the west line of Louisiana in 1846.

The map dated February 13, 1839, entitled "T12 N. R. 16 W Northwestern District Louisiana," reveals that in 1837 the surveyor for the U. S. General Land Office had thought the western land boundary of Louisiana intersected the Sabine considerably west of the line subsequently marked by the Joint Commission in 1841, and he had surveyed out the western sections of the public land townships accordingly. This same map shows the "Texian Line" as located in 1841 to bisect Sections 6, 7, 18, 19 and 30 of Township 12, leaving the major portions of each section on the Texas side of the line. As shown in Defendant's Exhibit G, George W. Morse was employed by the United States to resurvey this land boundary north of the Sabine and reduce these sections so that their west lines would connect with the 1841 boundary line. His 1846 map⁴ shows the "Line of Demarkation" as the west line of the reduced fractional sections, which were subsequently conveyed to Louisiana with their west lines calling to coincide with the west line of the State.

⁴Defendant's Exhibit G, numbered 237 in the upper right hand corner.

⁵Defendant's Exhibit G, numbered 238, entitled "T12N.R. 16W., N.W. District, La."

In this connection, an interesting aspect of the "Line of Demarkation" shown on the two maps above referred to is that a southern extension of the line as resurveyed in 1846 (only 5 years after the Joint Commission survey) strikes more nearly the center of the River than the west bank, the intersection being at a point where the River is shown to be turning northwest.

In any event, the land boundary line and Louisiana's ownership of the land adjacent thereto were not established by reason of the Treaty of 1819 but by the resurvey authorized by Congress in 1846 and the land grants to Louisiana made by Congress under the Act of March 2, 1849. Thus, as to any Federal lands along the boundary north of the Sabine, Congress dealt favorably with Louisiana through constitutional procedures just as it dealt favorably with Texas on the western half of the Sabine in 1848.

HISTORICAL BACKGROUND AND THE TREATIES

I

THE HISTORICAL BACKGROUND ESTABLISHING LOUISIANA'S WESTERN BOUNDARY IN 1812, AND THE RELEVANT TREATIES DEMONSTRATE AS A MATTER OF LAW THAT LOUISIANA NEVER ACQUIRED ANY JURISDICTION OVER OR TITLE TO THE WESTERN HALF OF SABINE PASS, SABINE LAKE AND SABINE RIVER.

A. THE UNITED STATES ACQUIRED THE SABINE BY THE LOUISIANA PURCHASE IN 1803 AND HAD TITLE TO AND JURISDICTION OVER THE ENTIRE SABINE WHEN IT LIMITED LOUISIANA'S WESTERN BOUNDARY TO THE MIDDLE THEREOF IN 1811-1812.

Plaintiff has covered this point in its main brief, 13-15, but Louisiana raises certain questions about the validity and extent of the claim of the United States which should be answered. Not satisfied to accept the pronouncements of President Jefferson and subsequent Presidents and Secretaries of State that the purchase embraced all lands between the Mississippi River and the Rio Grande, including all of the Sabine and the Province of Texas, Louisiana files contrary views contained in a pamphlet published by a Minister of Mexico (Def. Ex. A, 98-119) and a nebulous historical sketch written by Frank Bond in 1933 (Def. Ex. A, 6). In further derogation of official U. S. claims, Louisiana asserts as to "Jefferson's imaginative horizons . . ." that the "realities were out of balance with the hopes, and the result was that the pretensions of the United States' leaders shrank . . . finally to the Sabine—by the time the Territory of Orleans was actually formed and Louisiana became a State" (La. Br., 20).

The foregoing assertions are historically incorrect. The Territory of Orleans was created in 1804; Louisiana became a State in 1812; and the Treaty with Spain was signed in 1819. During this entire period, President Jefferson, President Madison, President Monroe (acting earlier as Secretary of State) and Secretary of State John Quincy Adams asserted that the Louisiana Purchase extended to the Rio Grande.* Secretary of State James Buchanan later reviewed the history in a letter to John Slidell, U. S. Minister to Mexico, on November 10, 1845:

**A History of the Western Boundary of the Louisiana Purchase, 1819-1841, by Thomas M. Marshall, 10-17, 50-63; The Louisiana Purchase by Binger Hermann, Commissioner of the General Land Office of the United States, House Document No. 708, 56th Cong., 1st Session, 1900, 48.*

"It would be easy to establish by the authority of our most eminent statesmen—at a time, too, when the question of the boundary of the Province of Louisiana was better understood than it is at present,—that, to this extent at least, the del Norte (Rio Grande) was its western limit. Messrs Monroe and Pinckney, in their communication of January 28th, 1805, to Don Pedro Cevallos, then the Spanish Minister of Foreign Relations, assert, in the strongest terms, that 'the boundaries of that Province are the River Perdido, to the East; and the Rio Bravo to the West.' They say, 'the facts and principles which justify this conclusion are so satisfactory to our Government, as to convince it that the United States have not a better right to the Island of New Orleans, under the cession referred to, (that of Louisiana) than they have to the whole District of territory which is above described.' Mr. Jefferson was at that time President, and Mr. Madison Secretary of State; and you well know how to appreciate their authority. In the subsequent negotiation with Mr. Cevallos, Messrs. Monroe and Pinckney conclusively vindicated the right of the United States as far west as the Del Norte. Down to the very conclusion of the Florida Treaty, the United States asserted their right to this extent, not by words only, but by deeds."

In his history, *The Louisiana Purchase*, Binger Hermann, Commissioner of the General Land Office of the United States, wrote:

"Manning, *Diplomatic Correspondence of the United States*, VIII, 177. The same letter continues by relating that in 1818, President Monroe sent George Graham to Galveston to demand the removal of a group of French Napoleonic refugees who had established a colony (Champs D'Aisle) on the banks of the Trinity River, his instructions being to advise them that they were within the "territorial limits" of the United States. The Rio Grande is referred to at various times as the "Rio Bravo" and "Rio Grande del Norte." The Treaty of 1819 between Spain and the United States is often referred to as the "Florida Treaty."

"Our nation always claimed, as did France, that the Louisiana Purchase extended westward to the Rio Bravo. . . . The United States on this ground claimed Texas up to 1819 and then abandoned it when Spain ceded to us the two Floridas . . . this view is corroborated by reference to President Monroe's message to Congress December 7, 1819, concerning the treaty with Spain in that year, wherein he says: 'For territory ceded by Spain other territory of great value (Texas) to which our claim was believed to be well founded was ceded by the United States, and in a quarter more interesting to her.' "

It should be noted further that the Treaty of 1819 was not ratified until 1821, and during Spain's delay Secretary of State Adams wrote that if ratification was withheld, the United States would reassert "and never again relinquish" its right to a western boundary "at the Rio Grande del Norte."

In spite of this history, Louisiana asserts that in the Enabling Act of 1811 and its Constitution of 1812 "the boundary between Louisiana and *the Spanish territories* is placed in the middle of the Sabine" (La. Br. 7) and again that "The Kingdom of Spain owned the adjacent territory" when Louisiana was admitted to the Union (La. Br. 32). Louisiana has overlooked the House debates on the Enabling Act of 1811, which it has filed in Defendant's Exhibit A, 39-65, much of which is devoted to assertion of the title of the United

¹Hermann, *The Louisiana Purchase*, see footnote 5, *supra*. The author also points out that 25 years later President Tyler, in announcing the negotiation of a treaty for the annexation of Texas in 1844, said "the Government will have succeeded in reclaiming a territory which formerly constituted a portion, as confidently believed, of its domain under treaty of cession of 1803 by France to the United States."

²*John Quincy Adams and the Foundation of American Foreign Policy* by Samuel Flagg Bemis, 1956, 351.

States as far west as the Rio Grande and the fear of the new State being left with an uncertain boundary on the west.

Section 2 of the bill then under consideration and as passed by the House on January 15, 1811, provided for no fixed boundary on the west, merely describing the area of the proposed State to be that "now contained within the limits of the Territory of Orleans, except that part lying east of the river Iberville and a line to be drawn along the middle of the lakes Maurepas and Pontchartrain to the ocean" (Def. Ex. A, 62). Mr. Poindexter, the bill's chief advocate in the House, contended as Defendant now argues, that the western line of the State could be settled later by treaty. He said:

"It belongs exclusively to the high contracting parties, to render that certain, which by the deed of cession is equivocal, and whatever line they may consent to establish as the western extremity of the country ceded under the name of Louisiana will constitute the permanent limit of the State, whether it extends to Rio Bravo or the Sabine, or a meridian passing by Natchitoches" (Def. Ex. A, 57).

However, the Senate did not go along with any such uncertain western boundary for the State of Louisiana. It amended the bill to provide the definite and fixed western boundary provision which was finally enacted and is now before the Master in this case. Plaintiff is including the Senate proceedings in its Exhibit G filed herewith.

Finally, the Defendant, still insisting that "when Louisiana was admitted there was no state or territory west of her boundary," and "That the Kingdom of Spain owned the adjacent territory," adds a con-

cession; "though, we candidly admit that claims were being made by the United States to lands west of the Sabine" (Def. Br. 31-32). This admission, and the truth of it, settles the question as far as the courts of the United States are concerned. It is a well established rule that our courts will accept as valid the assertions of the political branch of the Government as to the extent of the territory of the United States. *Foster and Elam v. Neilson*, 2 Pet. 253; *Jones v. United States*, 137 U.S. 202, 221; *In re Cooper*, 143 U.S. 472; *Vermilya-Brown Co. v. Connell*, 335 U.S. 377, 380-381; *United States v. California*, 332 U.S. 19, 33-34.

Thus, as a matter of history and law, at the time Louisiana was admitted to the Union in 1812, the United States was asserting its title to the territory westward to the Rio Grande, including all of the Sabine and the Province of Texas, and these assertions continued until the 1819 treaty was ratified in 1821.

This accounts for Congress fixing the western boundary of the State of Louisiana in the middle of the Sabine in the Enabling Act of 1811. As indicated above, the United States was then claiming a vast territory west of the Sabine which might become a State, and, as shown in Plaintiff's main brief, 20-22, it was the established policy of Congress to fix mid-stream boundaries between the states and territories so that any present or future states would be treated equally with respect to such common boundary streams. This is precisely what was done in the same Act with respect to the Mississippi and Iberville Rivers which lay between the new State of Louisiana and the Territory of Mississippi. In fact, in all of Louisiana's other navigable water boundaries, the State line is in the middle of the stream or lake by specific calls or by operation

of the law which existed at the time of its admission.'

B. LOUISIANA'S WESTERN BOUNDARY HAVING BEEN FIXED IN THE MIDDLE OF THE SABINE BY THE LOUISIANA CONSTITUTION AND ACTS OF CONGRESS, WHICH HAVE NOT BEEN AMENDED, THAT STATE DID NOT AND COULD NOT ACQUIRE ANY JURISDICTION OVER OR OWNERSHIP OF THE WESTERN HALF OF THE SABINE.

Louisiana makes no further denial that its western boundary was fixed and limited at the middle of the Sabine at the time of its admission in 1812. Plaintiff's main brief, 16-20, relates the precise manner in which this was done by use of the same descriptive wording in the Enabling Act of 1811, the Louisiana Constitution of 1812, and the Act of Admission of 1812. The relevant portions of all three of these documents are copied at pages 3-7 of the Appendix to Plaintiff's main brief."

Notwithstanding these enactments and the fact that they have not been amended by Congress or the State of Louisiana, Defendant makes an argument that the Treaty of 1819, in which the United States ceded to Spain its territories west of the west bank of the Sabine, automatically resulted "in *coalescing* the western half of the Sabine with Louisiana." It cites no authority for this novel theory of enlargement of fixed water boundaries by "coalescence," and the nearest

'Louisiana v. Mississippi, 202 U.S. 1 (1906); Douglas, *Boundaries, Areas, etc. of the United States and the Several States*, Geological Survey Bulletin 817, 1930, 166-169.

"The definite and controlling language in each of these documents reads: "... beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude ...".

analogous recognized legal doctrine that we have found is that of "accretion," which obviously does not apply.

Even in a case where the ordinary rule of accretion would otherwise apply, the Supreme Court held in *New Mexico v. Texas*, 275 U. S. 279, 301-302 (1927), that the rule did not operate to move the river boundary that had been otherwise fixed in the middle of the Rio Grande by the Act of Congress admitting New Mexico as a State and by the Constitution of New Mexico adopted prior to its admission. This case is squarely in point, because it involved a river boundary between two States, and Texas was complaining of the Master's finding that the boundary had been moved eastward by accretion which occurred after the boundary had been fixed in the middle of the Rio Grande as it existed in 1850. In overruling this portion of the Master's Report, the Supreme Court said:

"Both Sides have filed exceptions to the master's report in reference to accretions. Texas, on the one hand, insists that he was in error in reporting as the boundary line the location occupied by the river after it has been moved eastward from its location in 1850 by accretions. New Mexico, on the other hand, insists conditionally—that is, only if its exceptions as to the location in 1850 are not sustained—that in determining the accretions in the Country Club area the master fixed the line of such accretions in an indefinite manner and not far enough to the east. We find that the contention of Texas is well taken and the conditional contention of New Mexico is therefore immaterial.

"This case is not one calling for the application of the general rule established in *Nebraska v. Iowa*, 143 U.S. 359, *Missouri v. Nebraska*, 196 U.S. 23, *Arkansas v. Tennessee*, 246 U.S. 158, and *Oklahoma v. Texas*, 260 U.S. 606, as to changes in

State boundary lines caused by gradual accretions on a river boundary.

* * *

"New Mexico, when admitted as a State in 1912, explicitly declared in its Constitution that its boundary ran 'along said thirty-second parallel to the Rio Grande . . . as it existed on the ninth day of September, one thousand eight hundred and fifty, to the parallel of thirty-one degrees, forty-seven minutes north latitude.' This was confirmed by the United States by admitting New Mexico as a State with the line thus described as its boundary; and Texas has also affirmed the same by its pleadings in this cause. Since the Constitution defined its boundary by the channel of the river as existing in 1850, and Congress admitted it as a State with that boundary, New Mexico, manifestly, cannot now question this limitation of its boundary or assert a claim to any land east of the line thus limited." (301-302)¹⁰⁰

Texas submits that the foregoing case completely answers all of Louisiana's contentions that this Sabine boundary could have been changed to include the western half of the river by any method other than legislative action by Congress and by the State of Louisiana. The Defendant shows neither.

1. The Treaty of 1819 did not make or approve any change in the western boundary of Louisiana.

Louisiana bases its only theory of possible Congressional approval of an extension of its western Sabine boundary on the Treaty between the United States and Spain negotiated in 1819. This argument is untenable

¹⁰⁰This opinion was modified in 276 U. S. 557 as to certain evidentiary statements made in the original opinion, but the holding remained the same. To the same effect is the holding in *United States v. Louisiana, et al.*, hereinafter quoted.

for two reasons: (1) the treaty does not mention the boundary of the State of Louisiana," and (2) State boundaries cannot be changed by treaties."

2. No State legislation was enacted by Louisiana changing its western boundary.

Louisiana bases its only claim of State legislative action amending the boundary provision of its constitution upon Resolution 212 adopted on March 16, 1848. This Resolution amounts only to an expression of intent to include within the State's boundary the western half of the Sabine "whenever the consent of the Congress of the United States can be procured thereto . . .". It was conditioned on Congressional approval which never occurred. Therefore, Resolution

"This point is fully covered in our main brief, 23-29. Louisiana cites two isolated instances in 1828 in which President John Quincy Adams and Secretary of State Henry Clay refer to a Resolution of the House inquiring about the line between "the State of Louisiana and the Province of Texas" and asserts that for a decade after 1819 "American Statesmen uniformly referred to the boundary established by the Treaty of 1819" in this manner. This is contrary to the history of the extended negotiations between the United States and Mexico over the location of the line "between the two countries" and the plain language of the Treaty of Limits between the United States and the United Mexican States signed in 1828. See *A History of the Western Boundary of the Louisiana Purchase, 1819-1841* by Thomas M. Marshall, *supra*, 71-85, and copy of the Treaty of 1828 at p. 14 of Appendix to Plaintiff's main brief.

"The cases in support of this point and the rule that territory acquired by treaty cannot even become a part of the United States without action by the Congress are discussed in our main brief, pp. 29-33. On portions of the Rio Grande acquired by the United States by treaty with Mexico after Texas entered the Union, Acts of Congress and the Texas Legislature were necessary to bring the area within the jurisdiction of the State. Public Law 132, 1922 (42 Stat. 359), Chapter 101, General Laws of Texas, 1923, and the House Judiciary Committee Report covering this procedure are included in Plaintiff's Exhibit G.

212 never became effective for any purpose other than as a petition for Congressional action.

Actually, this Resolution" is the most conclusive evidence in this case against the factual and legal contentions which are being made by Louisiana. By reading the entire document, rather than excerpts taken out of context, it is evident that on March 16, 1848, the Legislature of Louisiana officially recognized that its constitution, laws and jurisdiction *did not* extend over that "*part of the United States,*" embraced within the western half of the Sabine. By this Resolution asking for the consent of Congress to permit Louisiana to extend its jurisdiction over that part of the territory of the United States, it recognized not only that its western line was still located in the middle of the River but also the necessity for Congressional approval before a change in that boundary could be effected."

Congress denied the petition, evidently believing that it would be unfair to depart from its established policy of permitting each bordering state to have half of the navigable boundary streams. Instead, it granted the petition of the Texas Legislature and permitted that State to extend its boundaries to include the western half of Sabine Pass, Sabine Lake and Sabine River.

"Appendix to Plaintiff's main brief, pp. 20-21; also filed at pp. 288-288A of Defendant's Exhibit A.

"In international law, this type of recognition of a territorial title would estop future claims to the contrary. Schwarzenberger, in "Title to Territory: Response to a Challenge," 51 Am. J. Int'l. Law (1957), 316, says: "However weak a title may be, and irrespective of any other criterion, recognition estops the state which has recognized the title from contesting its validity at any future time." In *Michigan v. Wisconsin*, 270 U.S. 295, the Supreme Court held that the principles of international law are applicable to boundaries between states. See also 49 Am. Jur. 239.

The above mentioned Resolution of the Louisiana Legislature and Acts of Congress constitute significant official interpretations of the effect of the Louisiana Boundary Acts of 1811-1812 and the fact that they were unaffected and unchanged by the Treaty of 1819.

3. Geographical contiguity did not effect an extension of Louisiana's western boundary.

Louisiana's final argument—that being the westernmost State after the Treaty of 1819 was ratified in 1821, it should have automatically inherited the western half of the Sabine—ignores the fact that there remained strong opposition to the treaty relinquishing Texas up to the date of its ratification," and thereafter every American President and Secretary of State continuously sought to reacquire Texas by purchase or diplomacy until the Texas Annexation Agreement was accomplished in 1845." There was a reason for Congress to retain the western half of the Sabine for a possible future state, and any other policy would have been an unfair precedent for each subsequent western state which was later added to the Union." For instance, in 1846 Texas was the most western state and bordered on the Rio Grande with a Spanish Territory which later became the Territory and State of New Mexico.

"Much of the opposition came from Louisiana. Secretary of State Adams wrote that ratification in 1821 was opposed in a resolution introduced in the Louisiana Legislature and that Louisiana Governor T. B. Robertson "made an attack upon the treaty in his speech to the Legislature." *Memoirs of John Quincy Adams*, V, 285-86.

"See citations for this history in Plaintiff's main brief, 25-29; also *The American Secretaries of State and their Diplomacy* by Samuel Flagg Bemis, 1928, IV; and *United States v. Louisiana, et al.*, 363 U.S. 1, 39-40, footnote 73.

"The reason and the policy were stated by the Supreme Court in *United States v. Holt Bank*, 270 U.S. 49, 55, as follows: ". . . the United States early adopted and constantly

Its western border was very properly and consistently fixed at the middle of the Rio Grande. *New Mexico v. Texas*, supra.

Louisiana's theory of automatic enlargement of its boundary after 1819 because of being then the most western state of the Union (La. Br., 7, 21, 27) is akin to the old rule of "contiguity" or "geographical propinquity" by which nations once acquired additional territory under international law. The doctrine was rejected in the 19th century "because it is wholly lacking in precision," and it was never applied to include areas outside of a fixed statutory boundary or "to the extent of invoking it to supersede a vested legal title" in another sovereign." Obviously, the theory cannot apply on behalf of Louisiana against the United States under a Constitution which requires the approval of Congress before a State can change its boundary. In all of the cases cited by Defendant on this point, Congressional approval was held to be required.

The Supreme Court held squarely against Louisiana in *United States v. Louisiana, et al.*, 363 U. S. 1 (1960), when that State advanced the same argument with respect to its southern boundary being automatically extended to include any adjacent "tidelands" belt which was acquired by the United States under inter-

has adhered to the policy of regarding lands under navigable waters in acquired territory, while under its sole dominion, as held for the ultimate benefit of future States, and so has refrained from making any disposal thereof, save in exceptional instances when impelled to particular disposals by some international duty or public exigency. It follows from this that disposals by the United States during the territorial period are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain."

"*Digest of International Law* by Marjorie M. Whiteman, U.S. Department of State, 1963, II, 1046-1059.

national law after Louisiana's admission to the Union. The Court said:

"It is sufficient for present purposes to note that there is no question of Congress' power to fix state land and water boundaries as a domestic matter. Such a boundary, fully effective as between Nation and State, undoubtedly circumscribes the extent of navigable *inland* waters and underlying lands owned by the State under the Pollard rule."
(35)

* * *

"To the extent that Louisiana's reliance on post-admission events is for the purpose of showing that the United States established a three league 'National Boundary' in the Gulf, they cannot help her case, for reasons previously discussed. . . . Under the Submerged Lands Act, Louisiana's boundary must be measured at the time of her admission, unless a subsequent change was approved by Congress. If the Act of Admission fixed the boundary at the shore, neither action by Congress fixing greater boundaries for other States nor Executive policy on the extent of territorial waters could constitute Congressional approval of a maritime boundary for Louisiana . . ." (75-76)

II.

SINCE THE UNITED STATES HAD EXCLUSIVE TERRITORIAL JURISDICTION OVER THE WESTERN HALF OF THE SABINE ON JULY 5, 1848, THE ACT OF CONGRESS AUTHORIZING TEXAS TO EXTEND ITS EASTERN BOUNDARY TO INCLUDE THE AREA WAS VALID AND RESULTED IN TEXAS' PRESENT JURISDICTION AND OWNERSHIP.

Plaintiff has shown in Point I above that the United States acquired jurisdiction over and ownership of the western half of the Sabine in 1803; that it did not

make any cession thereof to the State of Louisiana or approve any change in that State's boundary so as to include such area; and that Louisiana did not acquire such jurisdiction in any other manner. Therefore, exclusive jurisdiction and ownership was in the United States when it passed the Act of July 5, 1848 (9 Stat. 245), consenting for Texas to extend its eastern boundary to include the area. There being no conflict with any right previously granted to or held by the State of Louisiana, the Act was valid in every respect and resulted in the jurisdiction and ownership held by Texas since 1849 and now asserted in this case. Full discussion of this point has been submitted in Plaintiff's main brief, 34-36.

MEANING OF THE MIDDLE OF THE RIVER

III.

THE THALWEG RULE IS INAPPLICABLE TO THIS CASE, AND THE BOUNDARY IN CONTROVERSY IS THE GEOGRAPHIC MIDDLE OF SABINE PASS, SABINE LAKE AND SABINE RIVER.

The history of, reasons for, and explicit exceptions to the thalweg rule clearly demonstrate its inapplicability to the Sabine boundary line between Texas and Louisiana. The original and more ancient rule calls for equal division of territory by use of a line equidistant from the river banks, and this is still the rule applicable to non-navigable rivers and to those navigable rivers in which a main channel is unknown or is not involved or alleged." The only reason for a

"Shore and Sea Boundaries, by Aaron L. Shalowitz, Vol. II, 374, published in 1962 by the Coast and Geodetic Survey, U.S. Department of Commerce; *Georgia v. South Carolina*, 257 U.S. 516, 521 (1922); *Iowa v. Illinois*, 147 U.S. 1, 7-8 (1892).

change in the ancient rule was to assure the states bordering on a river equal use of the main channel of navigation. The Supreme Court stated in *Minnesota v. Wisconsin*, 252 U. S. 273, 282 (1920):

"The doctrine of Thalweg, a modification of the more ancient principle which required equal division of territory, was adopted in order to preserve to each State equality of right in the beneficial use of the stream as a means of communication. Accordingly, the middle of the principal channel of navigation is commonly accepted as the boundary."

In *Iowa v. Illinois*, 147 U.S. 1, 7-8 (1892), the Supreme Court held the thalweg doctrine for boundaries between States is based entirely upon this equitable principle: "The interest of each State in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest." However, the opinion includes the following quotation from Creasy, *First Platform on International Law*, 222, which indicates that the ancient geographic line is the *prima facie* line until the existence of a different main channel is alleged and proven:

"Formerly a line drawn along the middle of the water, the *medium filum aquae*, was regarded as the boundary line; and still will be regarded *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered to be the line of demarcation."

In the same case, the Court made it clear that the thalweg rule will not apply if it has been otherwise

provided "by statute or usage of so great a length of time as to have acquired the force of law." This exception is also stated by the Court in *Arkansas v. Tennessee*, 246 U.S. 158, 170 (1918).

In *Georgia v. South Carolina*, 257 U.S. 516 (1922), the Supreme Court, then composed of eight of the same members who decided *Arkansas v. Tennessee*, supra, held that since equal rights of both States to navigation had been otherwise preserved, the reason for applying the thalweg doctrine was "out of the case." Therefore, the Court applied the more ancient general rule, deciding that the boundary line in the river was "midway between the banks of the stream."

Hence, we have the foregoing cases pointing out several exceptions to the applicability of the thalweg doctrine, three of which were specifically alleged in the Answer of the State of Texas to the Counterclaims of the State of Louisiana at pages 7-8. They will be presented in the following order:

A. THE ONLY BASIS FOR THE THALWEG RULE IS ABSENT IN THIS CASE, BECAUSE FREE AND COMMON USE OF THE ENTIRE RIVER FOR NAVIGATION WAS RESERVED TO THE ADJACENT TERRITORIES AND FUTURE STATES BY STATUTES AND TREATY.

In 1811, while the Territory of Orleans covered all lands from the Mississippi on the east to the Rio Grande on the west, Congress enacted a statute relating to the public lands in the Territories of Orleans and Louisiana, Section 12 of which provided:

"Sec. 12. *And be it further enacted*, That all Navigable rivers and waters in the Territories

of Orleans and Louisiana, shall be, and forever remain, public highways.””

In 1812, while the United States was still asserting its title to all lands between the Mississippi and the Rio Grande, Congress provided in the Act of Admission of the State of Louisiana” the following:

“Provided, That it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and territories of the United States, . . .”

Article 3 of the Treaty of 1819 between the United States and Spain contained the following provision:

“ . . . the use of the Waters and the navigation of the Sabine to the Sea, and of the said Rivers, Roxo and Arkansas, throughout the extent of the said Boundary, on their respective Banks, shall be common to the respective inhabitants of both Nations.””

Louisiana admits that under the above statutes and treaty the entire Sabine is free to uninterrupted navigation by the citizens of both States. It makes no allegation or argument that a boundary in the middle of a thalweg or a main channel of navigation is necessary

”Act approved February 15, 1811, Appendix, Public Acts of Congress, 1811, 1296, 1302. A copy is in Plaintiff’s Exhibit G.

”2 Stat. 701, April 8, 1812; printed at pages 5-7 of the Appendix to Plaintiff’s Brief in Support of Motion for Judgment.

”8 Stat. 252, Treaty of 1819, proclaimed February 22, 1821. See Appendix, page 9, Plaintiff’s Brief in Support of Motion for Judgment. This provision was carried forward in the Treaty with Mexico of 1828, 8 Stat. 372 (Plf. Br., App. 14).

to protect its rights of navigation. It is obvious that navigation is not an interest, much less the "paramount" or "controlling" interest so essential for the application of the thalweg doctrine.

Therefore, Texas submits that the Supreme Court's decision in *Georgia v. South Carolina*, supra, is controlling and that the boundary should be determined to be in the geographic middle of the Sabine bodies of water, equidistant from the banks and shores, which is the location that has been recognized and followed by Congress, Federal agencies, and agencies of both States for more than 100 years.

Louisiana's attempt to distinguish *Georgia v. South Carolina* from this case, solely on the basis that the protection of navigation in that case had been by "convention" rather than by statute, overlooks the controlling point in the *Georgia* case. The Court held that the controlling point was that the location of "the navigable channel is not involved" in the case, because both States were protected in their use of the channel regardless of where the boundary line was fixed. The method of their protection, whether by convention, statute, or a combination of both, was irrelevant and had no bearing on the conclusion reached. The Court said:

"However, the general rule is that where a river, navigable or non-navigable, is the boundary between two States, and the navigable channel is not involved, in the absence of convention or controlling circumstances to the contrary, each takes to the middle of the stream (*Handly's Lessee v. Anthony*, 5 Wheat. 374, 379; Hall, *International Law*, 6th ed., 123; Creasy *First Platform of International Law*, § 231), . . .

* * *

"Obviously such a stream may be wide and deep and may contain the navigable channel of the

river, or it may be narrow and shallow and insignificant in comparison with the adjacent parts of the river. But such variety of conditions cannot affect the location of the boundary line in this case, because, by Article II of the Convention, equal and unrestricted right to navigate the boundary rivers is secured to the citizens of each State, irrespective of the location of the navigable channel with respect to the boundary line.

* * *

"Thus, Article II takes out of the case any influence which the Thalweg or Main Navigable Channel Doctrine (*Iowa v. Illinois*, 147 U.S. 1; *Arkansas v. Tennessee*, 246 U.S. 158, 169, 170, 171) might otherwise have had upon the interpretation to be placed on Article I, by which the location of the line must be determined, and leaves the uncomplicated case of a boundary stream between two States quite unaffected by other considerations.

"Thus again we have the case of a stream for a boundary between two States and with the precise location of the boundary line unaffected by the Thalweg Doctrine, or by other circumstances, and again the rule must be applied that the division line is midway between the banks of the stream,—here between the island bank on the one side and the South Carolina bank on the other,—its precise position to be determined when the water is at its ordinary stage" (521-522).

This was also the holding of the Supreme Court of Louisiana in the second case of *State v. Burton*, 31 So. 291 (1902), a copy of which is in Plaintiff's Exhibit C, 21-22. In the first case of *State v. Burton*, 29 So. 970 (1901), the Supreme Court of Louisiana had held that the middle of the Sabine was the boundary between Texas and Louisiana. A copy of this decision is in Plaintiff's Exhibit B, 86. In the second case, referring to the meaning of the "middle" of the Sabine, the syllabus written by the Court said:

“‘The thread’ of a stream is the line midway between the banks at the ordinary stage of water, without regard to the channel or the lowest and deepest part of the stream.”

**B. THE UNITED STATES, AS COMMON
SOURCE PROPRIETOR, PROVIDED BY
STATUTE FOR A GEOGRAPHIC MIDDLE
LINE IN THE SABINE**

In using the words “thence by a line to be drawn along the middle of said river” in the Enabling Act for creation of the State of Louisiana, approved February 20, 1811, there was no reason for Congress to intend anything other than a line along the geographic middle of the Sabine, because five days earlier it had already provided free access for navigation of the entire river in its Territorial Lands Act of February 15, 1811, *supra*.

The only possible basis for interpreting the language to mean the middle of a thalweg or main channel of navigation was absent, and this was confirmed in the Act of Admission, approved April 8, 1812, which contained both the boundary language above quoted and a reiteration that these “navigable rivers and waters . . . shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States . . .”

This was the construction given to the Sabine River boundary language of the aforesaid statutes when Congress passed the Act of July 5, 1848 (9 Stat. 245) consenting for Texas to “extend her eastern boundary so as to include within her limits *one half* of Sabine Pass, *one half* of Sabine Lake, *also one half* of Sabine River . . .” (Emphasis supplied). Obviously, these are mathematical terms indicating geographic halves of

the river and have no relation to a thalweg or main channel of navigation. Such was the precise construction given to the Acts by the Senate Judiciary Committee Chairman, who reported:

"... The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore belonged to the United States, and was not included in the State of Louisiana. . . . The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas . . .'"

Also, as shown by the many maps published by Federal agencies and filed in Plaintiff's Exhibits A, E and F, and the affidavits in Exhibit G, this has been the consistent construction of the Louisiana and Texas Boundary Acts by the executive departments of the United States. Each of the States adopted the language used by Congress in their respective enactments fixing the boundary in the middle of the Sabine, and their long interpretation of the line as a geographic center line rather than a thalweg line is evident from the numerous maps prepared by the agencies of both States and filed in Plaintiff's Exhibits A. and F."

Finally, this construction was officially pronounced by the Attorney General of Louisiana as being applicable (in the event the west bank is not the boundary) in a Memorandum entitled "Louisiana-Texas Boundary Dispute" delivered at a conference between

"Congressional Globe, 1st. Sess., 30th Cong., New Series No. 56 at p. 882; Appendix to Plaintiff's main brief, 23-24.

"Note particularly the map at page 7 of Plaintiff's Exhibit F of a 1930 centerline survey in Sabine Lake by J. C. McVea, on which Louisiana officials cooperated and endorsed their official approval. See Plaintiff's Exhibit C, 39, 41, for the official Report to the Governor of Louisiana on this work.

Louisiana and Texas officials on August 10, 1965, as follows:

"The problem in following the rule in *Louisiana v. Mississippi*, supra, is that the thalweg does not and cannot apply in Sabine Pass, Sabine Lake and the Sabine River, for the boundary between Louisiana and Texas in those areas is either located in the center of the water bodies or on the west bank thereof, and there is no thalweg rule to apply and extend in waters off coast separating the two states."

C. THERE WAS NO WELL-DEFINED OR HABITUALLY USED MAIN CHANNEL OF NAVIGATION IN SABINE PASS, SABINE LAKE OR SABINE RIVER IN 1812 OR THEREAFTER UNTIL MAN-MADE CHANNELS WERE DREDGED, AND DEFENDANT HAS FAILED TO ALLEGE OTHERWISE.

We take it from the quotations in *Iowa v. Illinois*, supra, that the burden is upon a state asserting the applicability of the thalweg doctrine to allege and show that there in fact exists a thalweg in which "vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*." This also seems evident in the other thalweg cases cited above and in Defendant's Reply Brief.

Louisiana has not alleged that in 1812, or at any subsequent date, there was a known thalweg or habitually used main channel of navigation different from the geographic middle of Sabine Pass, Sabine Lake or Sabine River. Texas alleged in its Reply to the Counterclaims of Louisiana (p. 8) that there was no such channel, and Louisiana failed to make any specific denial thereof in its brief. Defendant's only pleading

"Item 16, Plaintiff's Exhibit C, 33, 36.

with reference to this issue is its alternative Counterclaim No. 3, page 7, of its Amended Answer and Counterclaims, in which it alleges that the boundary "is in the middle of the Sabine River, under accepted international law . . ." Its brief and exhibits contain no references to the physical conditions with respect to whether a thalweg was ever known to exist in the Sabine prior to the dredging of man-made channels.

Louisiana simply cites the cases which apply the thalweg doctrine for the purpose of protecting equal rights to navigable channels of the Mississippi and other major waterways without any allegations or showing that the Sabine presents the basic conditions necessary for the rule to apply even if navigation rights were involved in this case. Furthermore, Defendant does not contend that any evidence is necessary for the Master and the Court to decide as between the geographic and thalweg rules in this case."

Islands

As far as we presently know, all natural islands in the Sabine waterways which existed in 1812 lie east of the approximate geographic centerline as shown on the U. S. Geological Survey topographic maps on file in this case. Only man-made islands and fingers of the shore are presently known to exist within the western half

"Although Texas does not believe the burden is upon it to show the non-existence of Thalweg channels, we are including in our Exhibit G affidavits and U.S. Corps of Engineers Reports negating the existence of such channels. As to Sabine Lake, they show it is a wide basin of shallow water with the same average depths across the Lake in all directions. See the 1838 Joint Commission Survey map of Sabine Lake in Defendant's Exhibit A and later soundings shown on pages 23-25 and 27 of Plaintiff's Exhibit A. In *Minnesota v. Wisconsin*, 252 U.S. 273, the Supreme Court applied the geographic middle rule to this type of water area in Lower St. Louis Bay (232-233).

of the Sabine. Accordingly, Texas is not apprised of any controversy over islands which would exist if the Master finds the boundary line to be approximately as shown on the latest topographic maps made by the Geological Survey in cooperation with the State of Louisiana. If this should result in an island controversy not now anticipated, either party could present the facts at the time the exact location of the boundary is to be surveyed. Plaintiff respectfully suggests that the Master reserve such matters for determination after the Supreme Court has passed upon his findings as to the basic issue of whether the boundary is on the west bank or in the geographic middle of the Sabine.

ACQUIESCENCE AND PRESCRIPTION

IV.

THE RECORD SHOWS UNDISPUTED EXERCISE BY TEXAS AND ITS PREDECESSOR IN TITLE, THE UNITED STATES, OF DOMINION AND JURISDICTION OVER THE WESTERN HALF OF THE SABINE FOR A PERIOD OF 157 YEARS, WITH ACQUIESCENCE BY THE STATE OF LOUISIANA SUFFICIENT TO ESTABLISH PRESCRIPTION AND ACQUIESCENCE AS A MATTER OF LAW.

GENERAL STATEMENT .

Defendant contends that neither the United States nor Texas could perfect prescription in the western half of the Sabine because Louisiana enjoys the common right of navigation in the entire stream (Def. Br. 37-38). This argument is refuted by the Supreme Court decisions hereinafter cited, and it ignores the fact that a river is more than the overlying waters.

A river includes the bed, the air space above for bridges and transmission lines, and the sand, shell, gravel, and oil beneath the water, without which the adverse claim of Louisiana perhaps would not have been asserted. All of these are subject to the common rights of navigation possessed by others. However, the navigational servitude does not prevent a state from running prescription by exercising dominion and jurisdiction over the area.

Louisiana asks "how does one 'possess' a river" for the purpose of establishing prescription? (La. Br. 38) The State of Louisiana should know the answer after the manner in which it successfully prevailed upon the Supreme Court to apply the rule as to its water boundaries in *Louisiana v. Mississippi*, *supra*, which is a leading case on the subject. Therein, Louisiana made the same contentions and offered the same type of undisputed evidence that we have filed with the Master in this case, and Mississippi raised, and the Court rejected, the same type of legal obstacles that Louisiana now presents in this case. Other similarities will be reviewed later.

Louisiana urges that any acts and deeds performed by Texas subsequent to 1941, the year in which a Louisiana Governor wrote the first protest and asserted the first claim to a Texas Governor, are irrelevant and should not be considered by the Master. It cites no authority for this theory of tolling Plaintiff's period of prescription, and the cases negate it. The Supreme Court, in *Michigan v. Wisconsin*, 270 U.S. 295, 313, compares the prescription doctrine to the rule of adverse possession between individuals." In the latter,

"The particular principle applied by the Court in that case related to constructive possession and further answers Defendant's question as to how "possession" of a river may

the filing of a lawsuit or complete ouster is necessary to toll the prescriptive period. (2 C.J.S. 700-701.) The Court quoted from *Indiana v. Kentucky*, 136 U.S. 479, 509, in which it was significantly pointed out that for over seventy years Indiana "never asserted any claim by legal proceedings . . ." As in the *Indiana* case, the Court considered prescriptive acts which occurred up until the Complaint was filed despite intervening assertions of adverse claims by officials of the other state.

Likewise, in *Louisiana v. Mississippi*, *supra*, where the Mississippi Governor and Legislature had asserted claims to oyster beds which almost led to armed conflict in the controverted area, the Court considered actions of the parties up until the Complaint was filed in 1902, pointing out that Mississippi "fails to satisfy us that she attempted any physical possession or control until after 1900" (57).

Because it is undisputed in this case that Louisiana filed no lawsuit and took no physical control amounting to ouster, Texas submits that all acts of prescription and acquiescence are relevant up until the date the Complaint was filed on December 12, 1969, which is a period of 157 years after the boundary of Louisiana was fixed in the middle of the Sabine in 1812. Even if Louisiana were correct in its contention to the contrary, there is an undisputed period of prescription

be shown. The Court said: "The rule is well-settled in respect of individual claimants that actual possession of a part of a tract by one who claims the larger tract, under color of title describing it, extends his possession to the entire tract in the absence of actual adverse possession of some part of it by another. . . . Upon like grounds and with equal reason, under circumstances such as are here disclosed, the principle of the rule applies where states are the rival claimants. . . . In applying the rule, the area within the described boundary, both land and water, must be considered as together constituting a single tract of territory" (313-314).

and acquiescence for 129 years (1812 to 1941) without any protest from a Louisiana official, and this is longer than the period shown in any of the above cases.

Mr. Jacob H. Morrison, who drafted the letter for Louisiana Governor Sam Jones to send to the Governor of Texas on November 27, 1941, (Def. Br. 91-92) recognized that Louisiana might be barred by its long acquiescence in the claim of Texas to the west half of the River." Later, on December 12, 1949, Governor Jones recognized this possibility in a letter to the Director of the Louisiana Department of Public Works, in which he said, "*Unless there has been acquiescence, it is quite clear our title extends to the west bank because an Act of Congress cannot supersede a treaty.*"

Plaintiff's argument on this point will be confined to the undisputed evidence now before the Master in the Exhibits filed by both parties. We contend that Defendant has not controverted the affidavits and documents filed in support of the Motion for Judgment in a manner that creates a material issue of fact. On the contrary, Louisiana has left undisputed every act of prescription and acquiescence necessary for a finding in favor of Texas on this issue, and it does not list any witnesses or argue that there is a necessity for hearing them before a finding is made by the Master.

Plaintiff relies on the above cited cases *Louisiana v. Mississippi*, *Michigan v. Wisconsin*, and *Indiana v.*

"Plaintiff has obtained a copy of Mr. Morrison's first letter and brief on this subject addressed to Governor Jones on February 13, 1941, and they are being included in Plaintiff's Exhibit G. Mr. Morrison states in his 1941 brief, "It will probably be urged that by long silence and failure to protest, Louisiana has estopped herself to contest the boundary issue." Source: Louis Lenz Collection, University of Texas Archives, Austin, Texas.

"See copy at page 49 of Plaintiff's Exhibit C. Emphasis supplied.

Kentucky, in which the Supreme Court found, or approved a Master's finding, that the prevailing State had shown prescription and acquiescence on a river or navigable water boundary.

A. UNDISPUTED EXERCISE OF FEDERAL JURISDICTION AND LOUISIANA'S ACQUIESCENCE FROM 1812 TO 1849.

Plaintiff has covered this point in its main brief, 41-43, but Defendant counters that "no indicia of the federal prescence existed in the mud of the western Sabine" during the period from 1812 to 1849 (Df. Br. 41-42). The acts of dominion and sovereignty exercised by the United States and acquiesced in by Louisiana are detailed in Plaintiff's main brief, 13-29 and 33-34. They show that after Louisiana's admission in 1812, with its boundary fixed in the middle of the Sabine, the United States continued to exercise its exclusive jurisdiction and defended its sovereignty over the waters and land west of the Louisiana boundary until the Treaty of 1819 was ratified in 1821. Congress legislated for the area" and the executive branch negotiated continuously with Spain for its retention.

Any contention that the United States was not specifically concerned with the western half of the Sabine in 1819 is refuted by the fact that the final negotiations and last major disagreement between de Onis, on behalf of Spain, and John Quincy Adams, on behalf of the United States, concerned the exact area now in controversy. Don Luis de Onis insisted that the boundary between the two countries should be in the middle,

"Section 3 of the Louisiana Act of Admission in 1812 (2 Stat. 701) provided that "the residue of that portion of country which was comprehended within the territory of Orleans" together with the new State, shall comprise one district for judicial purposes.

and Adams took an adamant position that it should be the west bank of the Sabine and south bank of the Red River." Bemis writes:-

"One-half of the width of the boundary rivers separated the two contestants for a continent."

Adams prevailed, and after 1821 the United States continued to exercise exclusive jurisdiction over the west half of the Sabine and all of the Red River. As to the latter, Congress did not permit Texas to extend its boundary to the middle of that stream, and the United States still holds title to the south half of the Red River along the many miles where it flows between Texas and Oklahoma." Continued exercise of dominion and sovereignty by the United States over the western half of the Sabine is evidenced in the subsequent negotiations and treaties with Mexico and the Republic of Texas, which led to the marking of the west bank in 1840-41 as the boundary between "the two countries" (8 Stat. 511). This exercise of continued sovereignty and exclusive jurisdiction finally culminated in the Act of July 5, 1848, in which Congress authorized the State of Texas to extend its eastern boundary so as to include the western half of the Sabine."

Louisiana not only acquiesced in the aforesaid exercise of exclusive Federal jurisdiction over the western half of the Sabine by the inaction and silence spoken of in the cases cited above, but by the affirmative action of its legislature in Resolution 212, March 16, 1848, in which it acknowledged that the western half of the Sabine was "part of the United States" over which

"*Memoirs of John Quincy Adams*, IV, 255.

"*John Quincy Adams and the Foundation of American Foreign Policy*, by Samuel Flagg Bemis, 1956, 333-334.

"*Oklahoma v. Texas*, 258 U.S. 574 (1922).

"9 Stat. 245.

"the constitution and laws of the State of Louisiana, nor those of any other State or territory, extend . . .".

B. UNDISPUTED RECOGNITION OF GEOGRAPHIC MIDDLE BOUNDARY LINE BETWEEN TEXAS AND LOUISIANA BY CONGRESS AND FEDERAL AGENCIES SINCE 1849.

All of the above cited cases give great weight to recognition of a disputed boundary line by the Congress and Federal agencies in cases involving prescription and acquiescence. In *Louisiana v. Mississippi, supra*, the Court cited various surveys, maps and reports of Federal agencies showing the boundary contended for by the prevailing party in that case, saying that such matters "may properly be referred to as showing the general understanding of and acquiescence in the boundary . . ." (55).

In this case, Texas' prescription began with an Act of Congress in 1848 specifically authorizing it to include the western half of the Sabine within its boundaries, and continued with Congress enacting at least 109 items of additional legislation between 1852 and 1969 recognizing that such area is within the State of Texas. Plaintiff has listed 103 separate appropriations or authorizations in River and Harbor Acts passed by Congress relating to Sabine River improvements, in

"See Plaintiff's main brief, Appendix, 20-21. Louisiana later admitted that "The United States enjoyed undisputed and general jurisdiction over the remaining western half . . . from the date of the treaty with Spain, February 22, 1819, to July 5, 1848 . . ." in its brief filed before the U. S. General Land Office in a dispute with Texas involving islands in the Sabine. (Plf. Br. 28.) Defendant is mistaken in its assertion (Def. Br. 56) that a copy of this brief was not on file with the Master. The entire brief was filed in Plaintiff's Exhibit B, 9-34.

which Texas is specifically mentioned as the State within which all or a portion of such projects are located."

Plaintiff has filed with the Master a total of 54 maps prepared by Federal agencies, some of them made in cooperation with the State of Louisiana, which show the geographic middle of the Sabine to be the boundary between Texas and Louisiana." Defendant's chief reply to these is that the cartographers perhaps merely assumed that the geographic middle was the correct line and that they were not intended to fix boundaries. The Supreme Court rejected Mississippi's similar contention in *Louisiana v. Mississippi*, *supra*, and followed the argument advanced by Louisiana in that case that it was not a question of "fixing" but one of recognizing and portraying the location of boundaries theretofore established by Congress and the State. That is our position in the present case."

"Plf.'s Ex. B, 35-39 and Ex. E, 19-23. In Exhibit E, 1-2, 5-18, Plaintiff has listed six other Acts in which Congress gives similar recognition with respect to bridges across the Sabine, and one Act in 1906 creating "an additional (customs) collection district in the State of Texas . . . to comprise all of that portion of Texas . . ." specifically described as being bounded on the east by the center of Sabine Pass and Sabine Lake (Plf. Ex. E, 3-4).

"U.S. General Land Office maps, 1896, 1916, 1930, Ex. A. 1 and Ex. F, 1-2; U. S. Geological Survey maps, 1922, 1931, 1932-35, 1944, 1954-60, 1960-69, Ex. A 2-20, 26-45, 48; U. S. Department of Agriculture map, 1913, Ex. F 4; U. S. Corps of Engineers maps, 1947-67, Ex. A 21-25, Ex. C 71, 74-76, 82, and Ex. F 34, 36.

"In further reply, Texas is filing herewith in its Exhibit G an affidavit from Robert H. Lyddan, Chief Topographic Engineer of the U. S. Geological Survey, showing that the boundary line between Texas and Louisiana through the Sabine, as portrayed on Geological Survey maps, "is based on statutes quoted and information contained in U. S. Geological Survey Bulletin 1212 'Boundaries of the United States and the Several States' . . ."; that the line is "positioned one-half way between the stream banks as determined from aerial photographs. . . ."

Also, Plaintiff has filed letters from the U. S. General Land Office in 1903 and 1932 recognizing the boundary as claimed by Texas." Thus, the recognition of this boundary between Texas and Louisiana by Congress and the Federal agencies has been continuous from 1849 to the present time, a period of more than 120 years, and Defendant offers no affidavits or exhibits to the contrary." This covers a longer period than that involved in any of the cases cited above, and the number of Federal agency maps and recognitions by Congress and Federal agencies appears to be far more than those indicated in any of the previous Supreme Court cases in which the rule of prescription and acquiescence was applied.

C. UNDISPUTED EXERCISE OF DOMINION AND JURISDICTION BY TEXAS SINCE 1849.

There is present and undisputed in this record on Motion for Judgment every act of affirmative action required in any of the above cited cases to run prescription as to water or submerged lands. In addition to the great weight given in those cases to Federal recognition and maps, they stress (1) necessity for public notice of the boundary claimed, (2) extension of state and local "political and police control and jurisdiction over the disputed area," (3) grants of adjacent or filled land to or from the state, (4) collection of taxes, and (5) a continuous claim and exercise of jurisdiction uninterrupted by lawsuit or ouster by the opposing state.

"Plaintiff's Exhibit B, 43-49.

"Curiously enough, the only map prepared by a Federal Agency dated after 1849 filed herein by Defendant is a U. S. General Land Office Map of 1879, which shows the boundary-shaded line east of the Sabine, or at least east of Sabine Lake.

(1) and (2) above are shown by the Act of Congress of 1848 and the Act of the Texas Legislature of 1849, the latter extending not only the State boundary to include the western half of the Sabine, but also the boundaries and jurisdiction of each county adjacent to the Sabine. Ever since 1849, Louisiana has had notice of the jurisdiction asserted by Texas. In addition, the cities of Port Arthur and Orange have extended their city limits and therefore their "political and police" jurisdiction to the geographic center of the Sabine since 1911 and 1914, respectively."

In addition, Plaintiff has filed affidavits of State officials showing that State police jurisdiction has been continuously exercised over the area as required in (5) above." These law enforcement officers swear positively that the game and fish laws, traffic laws and criminal laws have been continuously enforced by their departments since at least 1929, and that their counterparts in Louisiana have enforced Louisiana laws only to the center line of the Sabine." Louisiana has not filed any affidavit or document disputing these facts. The assertion in the Louisiana brief, p. 60, that "The record leaves no doubt that law enforcement agencies of both states patrolled all over the Sabine and neither confined itself to the middle thereof . . ."

"Affidavits of Robert A. Bowers, City Engineer of Port Arthur, Plf. Ex. A 46-47; Ex. B 69-71A; and Ex. E 68-92; and Affidavit of F. E. Force, Tax Assessor-Collector of Orange, Ex. E 50-64.

"Affidavit of Robert L. Cross, Law Enforcement Coordinator, Texas Parks and Wildlife Department, Appendix to Plaintiff's main brief, 25-34; Affidavit of Captain C. L. Russell, Texas State Highway Patrol, Ex. E 150-151; Affidavit of Jerry Sadler, Commissioner of the Texas General Land Office (Plf. Br., App. 34-40).

"Louisiana law enforcement officers were directed by the Supreme Court of Louisiana to respect this line in the *State v. Burton* cases, *supra*, in 1901 and 1902.

is no substitute for sworn evidence and is a complete misstatement of what the record plainly shows in the affidavits of Cross and Russell.

As to requirement (3) above, the record shows that numerous grants have been made by Texas in the western half of Sabine Lake since 1930. The first was to H. L. McKee for the purpose of building a proposed toll bridge across the Lake to the Louisiana shore, and it extended to the geographic center of the Lake." The affidavits show there was no protest from Louisiana against any of these grants or to the reclaiming of the 3000 acre Pleasure Island and the extensive improvements built thereon by the City of Port Arthur, County of Jefferson, State of Texas and the United States Government." It is also undisputed that from 1950 to 1969 Texas granted 78 oil and gas leases on behalf of its Permanent School Fund covering submerged lands within the western half of the Sabine, on four of which there are now producing oil wells," and that from 1938 to 1970 Texas granted 32 shell, sand and gravel dredging permits on the western half of the Sabine (Plf. Ex. E 155-196).

As to collection of taxes, (4) above, Texas has filed an affidavit showing that it has collected taxes on that portion of railroad bridges and oil pipelines lying west

"This is the same tract that was surveyed by J. C. McVea in 1930, with Louisiana officials cooperating and approving the centerline boundary in the middle of Sabine Lake. (See map 7, Plf. Ex. F, and details of Louisiana participation in Plf. Ex. C 38-41.) Subsequent grants to the United States Government in 1933 for U. S. Corps of Engineers' headquarters and to the City of Port Arthur in 1934, 1937, 1955 and 1967 are shown in Ex. E 77-85 and on map 46 of Ex. A.

"Plf. Ex. B 69-71 and Ex. E 68-92.

"Affidavit of Jerry Sadler, Commissioner of the General Land Office (Plf. Br. App. 34-40).

of the geographic center of the Sabine, since 1905 as to railroads and since 1933 as to oil pipelines." From the mouth of the Sabine to Logansport (near the 32nd parallel), there are four railroad bridges, at least 22 oil and gas pipelines, and 3 electric power transmission lines which cross the Sabine. In Plaintiff's Exhibit B, 29-47, there are affidavits from the tax officers of the railroad and utility companies showing that they are assessed and pay taxes to Texas and its counties to the approximate geographic center line of the Sabine, and that Louisiana assesses and collects only on the portions lying east of such line. Some have attached maps which were displayed to both Texas and Louisiana tax officials in determining their total mileage taxable in each state, and these maps show the geographic center as the boundary.

Louisiana filed no affidavit disputing these facts. It resorts only to a statement in its brief, p. 62, that "... Louisiana taxing officials, if informed of such action at all, simply allowed the matter to take its course ...". The above mentioned affiants swear that the tax officials of Louisiana not only were informed but accepted such centerline for determining the mileage to be taxed by Louisiana. In further reply to Defendant's casual treatment of this, one of the most conclusive evidences of prescription and acquiescence, Plaintiff is filing herewith in its Exhibit G affidavits from 12 pipeline companies showing that they too have met with Louisiana tax officials and that the approximate geographic center line of the Sabine has been accepted by the officials of both States for taxing purposes for many

"Affidavit of Earl Rossell, Intangibles Tax Assessor, Texas State Comptroller's Office (Plf. Ex. E 27-28). See also affidavits from city and county tax collectors, Plf. Ex. B 76-83, and Ex. E 48-67.

years, and that they pay taxes to Texas west of the center line and to Louisiana east of such line.

As summarized above, the many affirmative acts of dominion and jurisdiction exercised by Texas over the area in controversy since 1849 satisfy every requirement of proof held by the Supreme Court to be essential for prescription to apply to a water boundary, and they are not disputed by any affidavit or document filed herein by Defendant.

D. UNDISPUTED ACQUIESCENCE BY LOUISIANA SINCE 1849.

The cases cited above, as well as many other Supreme Court cases, indicate that acquiescence can be shown by long continued silence and failure to protest during the period when the opposing state was openly exercising acts of dominion and jurisdiction. Assertions of claims by an Indiana Governor and legislative commission were not allowed to absolve Indiana's neglect to institute legal proceedings in *Indiana v. Kentucky*, *supra*. In holding for Kentucky, the Court said:

"It was over seventy years after Indiana became a State before this suit was commenced, and during all this period she never asserted any claim by legal proceedings to the tract in question. . . .

* * *

"Such acquiescence in the assertion of authority by the State of Kentucky, such omission to take any steps to assert her present claim by the State of Indiana, can only be regarded as a recognition of the right of Kentucky too plain to overcome, except by the clearest and most unquestioned proof."

In *Michigan v. Wisconsin*, *supra*, which involved the water boundaries between the two states and islands within such waters, Michigan had adopted a new con-

stitution in 1908, in which its revised boundary in the Montreal River conflicted with the boundary line of Wisconsin as described in its Enabling Act of 1846, and to which line the Court found Wisconsin had continuously exercised its dominion and sovereignty. The Court said that for more than 60 years Michigan "stood by without objection" and "without protest." The Court said:

"Indeed, nothing appears to indicate dissatisfaction with the boundary thus established until the adoption of the Constitution of 1908, and, even then, except to the extent that this may be regarded as a continuing assertion of a claim to the boundary as there set forth or as originally described in the Michigan Enabling Act, the matter was allowed to rest until 1919.

* * *

"Notwithstanding, the State of Michigan at this late day insists that the boundary now be established by a decree of this court in accordance with the description contained in her Constitution of 1908. Plainly, this cannot be done. That rights of the character here claimed may be acquired on the one hand and lost on the other by open, long-continued and uninterrupted possession of territory, is a doctrine not confined to individuals but applicable to sovereign nations as well, . . . and, *a fortiori*, to the quasi-sovereign states of the Union. The rule, long-settled and never doubted by this court, is that long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority."

In the above cases and in *Louisiana v. Mississippi*, *supra*, the only evidence of affirmative acts of acquiescence on the part of the losing state were (1) knowledge and use of Federal agency maps showing the line as claimed by the prevailing state, and (2) maps pre-

pared by agencies of the losing state showing the line as claimed by the prevailing state. These acts are undisputedly attributable to Louisiana in this case, as are complete silence, inaction, failure to object or even protest, until Governor Jones' letter was written in 1941. This was 92 years after Texas began its long-continued exercise of dominion and jurisdiction.

As heretofore stated, Texas has filed 54 maps by Federal agencies showing the geographic middle of the Sabine to be the boundary line. As emphasized by the Court in *Michigan v. Wisconsin, supra*, these maps were "published and available to the public." In fact, 34 of these maps were made from 1932 to 1936 and 1954 to 1960 by the U. S. Geological Survey under contract with and in cooperation with the State of Louisiana, and they were publicly distributed by agencies of that State."

In addition, we have filed with the Master, copies of 37 maps prepared by Louisiana State agencies, all of which show the boundary in the geographic middle of the Sabine," and plans and maps for 7 bridges

"Plaintiff's Exhibit A 3-15, 21, 23-30, 32-38, and 40-45. Copies of the 1932 and 1940 contracts are being filed in Plaintiff's Exhibit G. They specifically call for "political boundaries" to be shown, and Exhibit E 39-41 and 87-88 show that the Louisiana Department of Public Works was quite active in the mapping project and furnished much of the basic data. Affidavit of Robert H. Lyddan, Chief Topographic Engineer, U. S. Geological Survey, states: "To the best of my knowledge the U. S. Geological Survey has not received any objections from either the State of Louisiana or the State of Texas to the manner in which these topographic maps position the boundary line. . . ." (Plf. Ex. G filed herewith, pp. 16-17.)

"These include 1907, 1913 and 1925 maps published by the Louisiana State Board of Agriculture and Immigration, Exhibit F 2, 3, 5; the first Official State Map of Louisiana by the Louisiana Department of Public Works in 1937, as authorized by the Louisiana Legislature in 1928, Exhibit

jointly constructed from 1927 to 1963 by the Louisiana and Texas State Highway Departments and paid for equally by each State."

That would be all the recognition and acquiescence necessary under the three cases above cited, but there is much more in this case. In fact, a study of all of the Supreme Court decisions on acquiescence in boundary suits between states indicates none in which there was present as many undisputed affirmative acts of acquiescence as are present in this case. Other affirmative actions are enumerated in Plaintiff's main brief, 43-49, and in our subsequently filed Exhibit C, which contains an index and summary of 45 documents to which we respectfully refer the Master in order not to further lengthen this reply brief. They include the Acts creating the Louisiana parishes (counties) along the Sabine;" Acts of the Louisiana Legislature in 1955 and 1956 authorizing Cameron Parish, Louisiana to erect a bridge from the east to a point in Sabine Lake where it will meet a bridge to be constructed "from the Jefferson County, Texas, side of such

F 8 (see Act in Exhibit C 37 and details of 9 years' work on this map in Exhibit C 42-46); 21 official Louisiana Highway Department maps of State and Parishes from 1930 to 1970, Exhibit F 9-29; and 9 Louisiana Department of Conservation maps, 1958 to 1967, Exhibit F 36a and Exhibit C 54-70.

"Plaintiff's Exhibit F 38-65. See affidavit of Farland Bundy, Bridge Field Engineer, Texas Highway Department, for history, contracts, and pictures showing "State Line" signs erected jointly on bridge at point above centerline of River on U.S. Highway 10, Exhibit E 93-142.

"Plaintiff's Exhibit C 5-13. All parish boundaries enacted after 1849 either call for the *east* bank of the Sabine or the middle. The only earlier boundary (Sabine in 1843) which called for the west bank was abandoned. See summary of this and other parish boundaries in Index to Plaintiff's Exhibit C, page 2, and subsequent maps of Sabine Parish in Exhibit F 13, 14, 22, 23, 36a and Exhibit C 89-90.

stream. . . .” At pages 21-23 of Exhibit C is the opinion by the Supreme Court of Louisiana in the second case of *State v. Burton, supra* (1902), holding that the geographic middle of the Sabine is the western boundary of Louisiana and a Louisiana Attorney General’s Opinion (1939) to the same effect.

Plaintiff’s Exhibit D contains all oil and gas leases executed by Louisiana on any portion of the Sabine. They date from 1922 to 1969. Attached to these 36 leases are 24 plats or metes and bounds descriptions showing that the boundary between Texas and Louisiana is in the geographic middle of the Sabine. These leases, ^{some} ~~some~~ of which were signed by the Governor, constitute further recognition and acquiescence in the line claimed by Plaintiff. As pointed out in our summary of these leases (Exhibit D, Index, 1-3), four of the riverbed leases contain self-serving “non-prejudice” provisions, and nine cover all interest “belonging to” or “owned by” Louisiana in the entire Sabine River or Pass. Defendant has filed an affidavit by Mr. Ory G. Poret, Deputy Register of the Louisiana State Land Office, (Def. Br. 82-89) in which he places a different interpretation on the extent of 16 of these leases, and yet his affidavit clearly states that the area of each is within a named parish of the State. As shown above, the boundaries of none of the parishes extend beyond the middle of the Sabine. For instance the description in Lease No. 376 to Tom C. Igoe, April 21, 1938, which he interprets as extending to the west side of the Sabine calls for “That part of the Sabine River owned by Louisiana . . . all in DeSoto Parish,” and this is the same lease referred to in the above mentioned

“Act 52, 1955, and Act 65, 1956 (Plf. Ex. C 125-128). See copy of contract under which this bridge was constructed by Jefferson County, Texas, and Cameron Parish, Louisiana (Plf. Ex. B 72-75) and photograph (Ex. E 109).

Louisiana Attorney General's opinion holding that Mr. Igoo's lease "would not go farther westward than a line drawn along the middle of the river."¹¹

Plaintiff's summary of these lease descriptions (Plf. Ex. D, Index 1-3) and the leases themselves dispute Mr. Poret's interpretations, but even if every word and interpretation of his affidavit were accepted as true and correct, they fail to show that any lessee took possession, drilled a well, or produced any oil, or otherwise ousted Texas from its dominion and jurisdiction over any of the area west of the centerline boundary, and they fail to absolve Louisiana of its acquiescence in this boundary for more than 121 years before the first questionable lease description listed by Mr. Poret was ever written.

The same is true of the eight right-of-way easements listed in the Poret affidavit and copied in Defendant's Exhibit E, 80-107. Curiously enough, the first of these was to H. L. McKee in 1929 to connect with his grant from Texas to the centerline of Sabine Lake, which line was surveyed in 1930 with the cooperation and written approval of Louisiana officials (Plf. Ex. F 7), and all the remainder have maps attached which clearly show the boundary line in the Sabine as claimed by Texas. All are signed by the Governor of Louisiana and the Register of the General Land Office, and Easement No. 431 is signed by Mr. Ory G. Poret as Deputy Register. In addition, Plaintiff will file herewith in its Exhibit G, nine Louisiana pipeline easements (dated from 1950 to 1966) which were omitted from

¹¹Opinion of the Attorney General of Louisiana, January 24, 1939 (Plf. Ex. C 23). For the list of Texas leases covering the western half of the Sabine, under which lessees have possession and four producing oil wells, see affidavit of Commissioner of the General Land Office of Texas (Plf. Br., App. 34-40).

Louisiana's Exhibit E. These also are signed by the Louisiana Governor and Register of the General Land Office, and all have maps attached which show the state boundary line as claimed by Texas.

Defendant's affidavit by Dr. Lyle S. St. Amant, Director of the Louisiana Wild Life and Fisheries Commission (Def. Br. 76, 81), stating that he "has always considered the boundary to be on the west bank of the Sabine Pass, Lake, and River" is not only irrelevant, but is also incomprehensible. He does not dispute the facts related in the affidavit of Robert L. Cross, Law Enforcement Coordinator for the Texas Parks and Wildlife Department (Plf. Br., App. 25-34), that since 1929 the Texas officers "enforced the laws relating to game and fish on the west one-half of the Sabine River, Sabine Lake and Sabine Pass" and "Louisiana officials enforced their game and fish laws only on the eastern half . . . and always respected our jurisdiction on the western half of these streams." Neither does he dispute the Louisiana Legislature's Resolution 211 of 1967 and Act of 1968 relating to boundary waters between Louisiana and Texas or the agreements thereby authorized and entered into between his Department and the Texas Department to provide for reciprocal licenses and uniform regulations on each side of the boundary line."

Furthermore, Dr. St. Amant's interpretation that his Commission's shell leases in Sabine Lake covered the entire body of water is misleading. He fails to explain a long established general policy of his department to use descriptions on State boundary streams

"Plaintiff's Exhibit C 15-18 and Exhibit B 57-68. See also official *Shrimp Regulations* issued by the Louisiana Commission in 1968 and attached map which shows the State boundary in the middle of Sabine Lake. (Plf. Ex. G.)

which on the face of the leases cover the entire streams between certain points, leaving it to the lessee to keep his operations within the Louisiana boundary lines. Defendant will not deny the use of this policy. It is shown by correspondence and samples of leases on the Mississippi and Pearl Rivers between Louisiana and Mississippi filed herewith in Plaintiff's Exhibit G. That the shell leases listed by Dr. St. Amant in his affidavit actually applied only to the eastern half of Sabine Lake is further shown by Map 5, following page 15 of an official report entitled "The History and Regulation of the Shell Dredging Industry in Louisiana Compiled by the Louisiana Wild Life and Fisheries Commisison," published by the Louisiana Commission in 1968.

In any event, the Louisiana shell leases themselves provide that the lessees shall file with the Commission maps and monthly reports showing the area in which operations are conducted. If any dredging location or report had been west of the centerline of Sabine Lake, it is assumed that it would have been filed in contradiction to the undisputed affidavit of Robert L. Cross that the Texas Department has issued shell dredging permits on the western half of Sabine Lake and that "thousands of tons of shell have been dredged . . . under these permits, with compensation therefor being paid to the State of Texas" and that Louisiana officials "confined their similar activities east of the center of the streams" (Plf. Br., App. 25, 27-28). Copies of the Texas shell dredging permits on the western half of Sabine Lake from 1930 to 1966 are shown in Plaintiff's Exhibit E, 155-195.

All of Defendant's other affidavits are directed at explaining the intent of certain maps and acts of

"See copy in Plaintiff's Exhibit G."

acquiescence by Louisiana State agencies, and like the Poret and St. Amant affidavits, if every word of them is taken as true and correct, they do not dispute any of Plaintiff's prescriptive acts of dominion and jurisdiction or negate the acquiescence of Louisiana in the boundary claimed by Texas. The affidavits by Hatley N. Harrison, Jr., of the Department of Public Works, Richard K. Yancey of the Wild Life and Fisheries Commission, and A. D. Jackson of the Department of Highways, merely say that certain maps made by their agencies and agreements between them and the State of Texas were "not intended to *establish* any legal boundary between the State of Texas and the State of Louisiana." (Emphasis added.) Plaintiff agrees. It has not been alleged that these maps and agreements were intended to *establish* the boundary. What we contend is that they speak for themselves as acts of recognition and acquiescence in a boundary line which had been established by Congress and the State of Louisiana in 1812. At least they were official acts of acceptance, use and recognition of the line to which the United States (from 1812 to 1849) and Texas (from 1849 to date) exercised dominion and jurisdiction without protest from any Louisiana official until 1941.

SUMMARY OF ACQUIESCENCE

The boundary line between Louisiana and Texas in the geographic middle of the Sabine was born and nurtured in acquiescence by the State of Louisiana. It was accepted by that State and written into its constitution in 1812, an action which has never been changed or amended. When the Act of 1848 consenting for Texas to extend its boundary was before the United States Senate, the record reflects that, "Mr. Johnson of La., and Mr. Downs in behalf of Louisiana, expressed their acquiescence in the arrangement" (Plf.

Br., App. 23-24). This acquiescence by Louisiana officials continued without the slightest objection until 1941, was soon resumed, and never resulted in Louisiana filing legal proceedings or ousting Texas from its possession and jurisdiction.

The following language from the Court's opinion in *Louisiana v. Mississippi*, *supra*, is applicable here:

"The question is one of boundary, and this court has many times held that, as between the States of the Union, long acquiescence in the assertion of a particular boundary and the exercise of dominion and sovereignty over the territory within it, should be accepted as conclusive. . . ." (at page 53).

That this prescription and acquiescence to the geographic middle prevails over any claim Louisiana may assert to a thalweg middle is shown in the Supreme Court's decision in *Arkansas v. Tennessee*, 310 U.S. 563.

As revealed by the record in this case, the two states have done quite well in living with this boundary midway between the banks of the Sabine for the past 121 years. Their cooperative efforts on bridges, law enforcement, and water development have not been retarded by a boundary line which divides the Sabine equally between them. It has served as a bridge rather than a barrier. This fact was recognized by Former Louisiana Governor Ruffin G. Pleasant in 1927, when he said in a speech at the dedication of the first bridge constructed jointly by the two states:

"This beautiful bridge, reaching across the Sabine River, and half in Louisiana and half in Texas, is a symbolical handclasp of eternal friendship."

After all of these years of friendly recognition and use of the "half and half" line by both states, it would

"Plaintiff's Exhibit E 99.

result in great injustice and inequity for Louisiana to be awarded the entire stream even if that State had some ancient and hitherto unlitigated basis for the claim, which we deny. The doctrine of acquiescence is an equitable rule which was evolved to protect ancient and long-recognized boundaries. In this case the long-recognized boundary is both the legal and the equitable boundary, while the west bank boundary claimed at this late date by Louisiana would be unfair and inequitable to Texas and its local units of government, which have expended great sums in reclaiming and improving much of the land in controversy.

CONCLUSION

The statutes, treaties, undisputed affidavits and exhibits filed by the parties in support of and in opposition to the Motion for Judgment show that no material fact issue exists and that the Special Master should find and recommend that the Supreme Court decree that the boundary between Texas and Louisiana is in the geographic middle of Sabine Pass, Sabine Lake and Sabine River, such line to be measured at points midway between the east and west banks when the water is at its ordinary stage.

Respectfully submitted,

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DECEMBER, 1970

CERTIFICATE

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the ----day of December, 1970, I served copies of the foregoing Plaintiff's Reply Brief by first class mail, postage prepaid, to the office of the Governor and Attorney General respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas

FILE COPY

MAY 22 1972

MICHAEL RODAK, JR., CLERK

**In The
Supreme Court of the United States**

October Term, 1969

No. 36 Original

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MAY 8 1972

**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

THE STATE OF TEXAS,

Plaintiff,

VS.

THE STATE OF LOUISIANA,

Defendant.

REPORT OF SPECIAL MASTER

**ROBERT VAN PELT,
Senior U. S. District Judge,
Special Master.**

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In The
Supreme Court of the United States

October Term, 1969

No. 36 Original

THE STATE OF TEXAS,
Plaintiff,
vs.
THE STATE OF LOUISIANA,
Defendant.

REPORT OF SPECIAL MASTER

ROBERT VAN PELT,
Senior U. S. District Judge,
Special Master.

This original action involves the determination of the boundary between the States of Texas and Louisiana insofar as the Sabine River,¹ extending from the Gulf of Mexico to the thirty-second degree of north latitude, constitutes the common boundary between the two States. Jurisdiction is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States. Your Special Master is of opinion, and reports, that this Court has jurisdiction of the parties.

¹ In this report when your Master uses the term "Sabine River," he is including the river, Sabine Pass, and Sabine Lake, unless otherwise noted.

I. PRELIMINARY STATEMENT

There are two preliminary matters which should be discussed by the Special Master before turning to the merits of the controversy.

(1) By oral motion, and more specifically as set forth as the second defense in the answer of the State of Louisiana, the question is raised of whether the United States of America should be made a party to these proceedings.

On March 1, 1845, the United States Congress passed a resolution which consented to the Republic of Texas being made a new State. The resolution stated, in part:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same may be admitted as one of the States of this Union.

"2. And be it further resolved, That the foregoing consent of Congress is given upon the following conditions, and with the following guarantees, to wit: First, Said State to be formed, subject to the adjustment by this government of all questions of boundary that may arise with other governments" 5 Stat. 797 (emphasis in original)

The various conditions given in the resolution were accepted by Texas.² By joint resolution of Congress,

² 1 Sayles Early Laws of Texas at 567-69, art. 1531.

approved December 29, 1845,³ Texas was admitted as one of the States of the Union, again subject to the conditions given in the March 1, 1845 Resolution.

Louisiana argues that the first condition of the March 1, 1845 Resolution, that is, that all questions of Texas' boundary that "may arise with other governments" are subject to adjustment by the federal government, means that the United States must be joined as a party to this action.

The United States Supreme Court considered this March 1, 1845 Resolution in the case of *United States v. Louisiana*, 363 U.S. 1, 36-64 (1960). It seems clear from a reading of that case that the congressional intent behind the Resolution was to have the United States settle any boundary questions between Texas and Mexico, and thus the phrase "other governments" in the Resolution meant Mexico.

As stated in *United States v. Louisiana, supra*, 363 U.S. at 44-45:

"[T]he precise fixation of the new State's [Texas'] boundaries was left to future negotiations with Mexico.

"The circumstances surrounding the [March 1, 1845] Resolution's passage make it clear that this was the understanding of Congress. Congressional attention was focused primarily on the great political questions attending annexation—primarily the extent to which slavery would be permitted in the new territory and the possibility that annexation would embroil this country with Mexico—and the matter of boundary received little consideration except as it was related to the larger issues. Public agitation over annexation had become so great that some bills had proposed annexation virtually in the abstract, with all details to be worked out later. Although the Reso-

lution as ultimately passed did settle the details of certain matters—notably slavery, the Texan debt, and the mode of annexation—the manifest purport of it and all the many other annexation bills introduced was to postpone the fixing of boundaries for the sake of achieving immediate annexation, and no apparent importance was attached to the particular verbal formula used to achieve such postponement.” (footnotes omitted)

In *Oklahoma v. Texas*, 252 U.S. 372 (1920), involving a dispute over the Red River boundary between the State of Texas and the State of Oklahoma, the United States was allowed to intervene. However, in *New Mexico v. Texas*, 275 U.S. 279 (1927), involving the boundary between New Mexico and Texas, the United States was not a party, and there appears to be no question raised by either party or the Supreme Court as to whether the United States should have been made a party.

In addition, the March 1, 1845 Resolution can be read to mean that the provision requiring the United States to adjust “all questions of boundary that may arise with other governments” was limited to the territory included within the Resolution, which was specifically stated to be the “territory properly included within, and rightfully belonging to the Republic of Texas” Texas has never claimed, and Louisiana has not contended otherwise, that the western half of the Sabine River belonged to Texas at the time of the 1845 Resolution. Rather, Texas bases her claim to the western half of the river on the July 5, 1848 Act of Congress which authorized Texas to “extend her eastern boundary to include the Sabine River’s western half,”⁴ and to rights obtained by prescription and ac-

⁴ The title to the July 5, 1848 Act read:
“An Act giving the Consent of the Government of the United States to the State of Texas to extend her eastern Boundary,

quiescence as hereafter discussed. Pursuant to this 1848 Act, the Texas Legislature did extend the State's boundaries on November 24, 1849. Appendix A, Item (8).

Thus, it would seem that the March 1, 1845 Resolution did not contemplate the United States' participation in Texas' boundary disputes, except as those disputes involved Mexico. However, even if this interpretation is not favored by the Court, the Resolution is not applicable to this controversy since Texas' claim is based on congressional action after 1845.

The United States has no interest in this litigation and thus it would serve no purpose to join the United States as a party. Any interest the United States might have had in the western half of the Sabine was given to Texas in the July 5, 1848 Act of Congress, which allowed Texas to extend her boundary. If Louisiana's contentions are correct, and Louisiana is entitled to the Sabine's western half, the United States still has no interest in the river. Therefore, your Master concludes that the United States is not a necessary party to this action.

(2) Texas filed herein a motion for summary judgment. This motion was briefed and following the introduction of evidence, as shown by the submitted record, was argued and submitted. Your Special Master concluded to reserve ruling on this motion because of the contentions of Louisiana that there were fact issues which were not resolvable on a motion for summary judgment. The case was then set for hearing on the merits. Such hearing has been had, the evidence

so as to include within her Limits one half of Sabine Pass, Sabine Lake, and Sabine River, as far north as the thirty-second Degree of North Latitude." 9 Stat. 245; Texas' Exhibit C, p. 4.

of both parties received, and the case stands ready for report by your Master. Your Special Master concludes, and reports, that the motion for summary judgment should be considered to be overruled and denied, since the decision on the merits, if the report of your Special Master is approved, will accomplish for the State of Texas all which sustaining of the motion for summary judgment would have accomplished.

II. THE ISSUES

The claims of the parties are set forth in the complaint, the answer and amended answer, the counterclaim of the State of Louisiana, and the answer to the counterclaim, each of which are on file in the office of the Clerk of the U. S. Supreme Court.

The claim made by the State of Texas is, in substance, that various acts of the United States Congress and the Louisiana Legislature demonstrate as a matter of law that the boundary between the State of Texas and the State of Louisiana is the geographic middle of the Sabine River. Texas also claims that the record shows undisputed exercise by Texas of dominion and jurisdiction over the western half of the Sabine River bed, including any islands located thereon, with acquiescence by the State of Louisiana sufficient to establish prescription and acquiescence as a matter of law.

The State of Louisiana claims ownership of the entire bed of the Sabine River, Lake, and Pass, to the west shore thereof. Louisiana contends this boundary was settled in favor of Louisiana's position, in the Treaty between the United States and Spain in 1819. Louisiana further claims ownership of all islands in the river whether on the east or west side of the middle of the river, regardless of whether its claim on the west half of the river is valid. Louisiana further claims that if it does not own the west half of the river, then it is owned by the United States of America and not by Texas. It is the further claim of Louisiana that the complaint filed by the State of Texas fails to state a claim upon which relief could be granted in that, as above mentioned, the United States should be a party to these proceedings. It further claims that there was an accord and satisfaction by reason of the

Treaty between the United States and Spain in 1819; that the Act of July 5, 1848 of the United States Congress transferred jurisdiction of criminal cases only; that there has been an acquiescence by the State of Texas in Louisiana's claim; that if it should be determined that the boundary between the two States is the "middle" of the Sabine River, the term "middle" calls for application of the thalweg doctrine, not the geographic middle. The boundary between Texas and Louisiana from the Sabine River north to Arkansas is not for determination in this case.

The claim of the parties can be resolved by answering three main questions:

1) Is Texas entitled, as a matter of law, to the western half of the Sabine River from the Gulf of Mexico to the thirty-second degree of north latitude by reason of the July 5, 1848 Act of Congress (9 Stat. 245)?

2) Does the doctrine of acquiescence and prescription apply to the claims of either State and if so, what is its application to the facts of this case?

3) What islands in the Sabine River became a part of the State of Louisiana under the Enabling Act of Congress of February 20, 1811, providing for the proposed State of Louisiana and under the Act of Congress of April 8, 1812, admitting Louisiana as a State?

Before discussing the facts, it is well to mention here the situation as to the exhibits offered and received in evidence and which become a part of this report by reference.

Many of the exhibits are immaterial. There is redundant or duplicate material in many of them and some are hearsay which nevertheless, when we are dealing with ancient maps, surveys, historical records,

and other exceptions to the hearsay rule, is not in the opinion of your Special Master ground for exclusion. They have all been examined and the recommendations are based upon the evidence specifically referred to herein.

Your Special Master received all exhibits offered in evidence by Texas and Louisiana. This was done for two reasons—1) in order that all of the exhibits would be in the record when the Special Master's report is reviewed; and 2) because your Special Master as a trial judge firmly believes in the correctness of the observation of Circuit Judge John B. Sanborn in *Builders Steel Co. v. Commissioner of Internal Revenue*, 179 F.2d 377, 379 (8th Cir. 1950), when he said:

"One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received, and, since he will base his findings upon the evidence which he regards as competent, material and convincing, he cannot be injured by the presence in the record of testimony which he does not consider competent or material. Lawyers and judges frequently differ as to the admissibility of evidence, and it occasionally happens that a reviewing court regards as admissible evidence which was rejected by the judge, special master, or trial examiner. If the record on review contains not only all evidence which was clearly admissible, but also all evidence of doubtful admissibility, the court which is called upon to review the case can usually make an end of it, whereas if evidence was excluded which that court regards as having been admissible, a new trial or rehearing cannot be avoided."

Your Special Master will set forth herein the salient facts on which he relies in making the recommendations of this report. He includes as appendices a resume of exhibits which are material to the issues and attaches

a list of all exhibits which were offered and received in evidence. Some are very large and bulky maps which the Court may want to examine but which cannot at any reasonable cost be easily reproduced and attached to this report.

The various problems presented by this dispute lead your Special Master to point out the relevance of Mr. Justice Harlan's statement in *United States v. Texas*, 162 U.S. 1, 43 (1896):

"It is a matter of regret that the question now presented, involving interests of great magnitude, should not have been determined, in some satisfactory mode, before or shortly after Texas was admitted as one of the States of the Union. It has remained unsettled for so long a time that it is not now so easy of solution as it would have been when the facts were fresh in the minds of living witnesses who had more intimate knowledge of the circumstances than any one can now possibly have upon the most thorough investigation."

III. HISTORICAL FACTS

Most of the facts, except as to the islands in the Sabine River in 1812, appear to your Special Master to be undisputed. The disputes largely center about the conclusions to be drawn from the facts.

General statements are sometimes made that the area in dispute was a part of the Louisiana Purchase. Such statements are not completely accurate. It is rather certain that President Jefferson, when the Louisiana Purchase was made, did not know the extent of the Purchase and that France did not know the exact boundary of the area it was selling. Jefferson and others contended for the Rio Grande as the west boundary (See Louisiana's Exhibit C, p.26), and, as late as the administration of President Jackson, claims were made for a boundary west of the area in dispute. Certainly this area is not within the Mississippi watershed, which arguably may be all LaSalle ever claimed for France.

The statement of Frank Bond, Chief Clerk of the U. S. General Land Office, contained in his historical sketch (Louisiana's Exhibit A, pp. 6-26) is doubtless correct that the views as to the extent of the Louisiana Purchase "are as diverse as their authorship is numerous."⁵ Though many pages of exhibits are devoted to this matter, which is highly interesting reading, and one of the true rewards of this appointment was to read the many exhibits disclosing the early history of this great area, your Master concludes that whether the Sabine River area is or is not a part of the Louisiana Purchase is immaterial to a final decision herein.

⁵ The best historical account of the Louisiana Purchase in this area is to be found in Bond's Historical Sketch, Louisiana's Exhibit A, pp. 6-26, and in Texas' Exhibit H, being a Geological Survey Bulletin 1212 dealing with boundaries of the United States and the several States, pp. 34-41.

In an Enabling Act approved February 20, 1811,⁶ the Congress of the United States authorized the inhabitants of that part of the territory or country ceded under the name of Louisiana, by the treaty made at Paris on the 30th day of April, 1803, between the United States and France, to form a government and seek admission to the Union under the name of Louisiana. The Act described the Sabine limits of the territory as "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude"⁷

⁶ 2 Stat. 641; Louisiana's Exhibit A, pp. 66-68.

⁷ There is in evidence (Louisiana's Exhibit A, pp. 34-38; Texas' Exhibit L) a similar act dated February 16, 1811, which, according to the Index to Louisiana's Exhibit A, is Act 218 of the Third Legislature, Orleans Territory, 2d Session (1811). However, the Act contains the language "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*" and is signed by the President of the United States, James Madison. Therefore it is not clear that the Act was actually an Orleans Territory Act. It may only have been printed in the Territorial Legislative Session Laws.

There is some dispute over the translation of the boundary language in the so-called Act 218, from the original French into English. The Louisiana version (Louisiana's Exhibit A, pp. 34-38) states: "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its lands to the 32d deg. of lat. . . ."

The Texas version (Texas' Exhibit L) reads: "beginning from the mouth of the Sabine River, from this point by means of an imaginary line in the middle of the river, all the land which is located within the said line as far as 32° latitude"

The debates relating to the adoption of the February 20, 1811 Enabling Act are set forth in Louisiana's Exhibit A, pp. 39-63. They cast no further light on the boundary question. However, it is interesting to observe, and your Master cannot refrain from pointing out as a matter of history, that Congressman Quincy of Massachusetts on January 14, 1811, in opposing the Act, said that if the bill was passed the bonds of the Union were virtually dissolved; that it was the duty of some States to prepare for separation amicably if they can, violently if they must. This may have been the first time where, on the floor of the Congress, a claim later espoused by the Southern States on a dissolvable Union was announced. It is interesting to note also that it was announced by a Massachusetts Congressman, not by a southerner. Upon being called to order for inviting a portion of the people to insurrection and the Speaker of the House ruling Congressman Quincy's com-

In November, 1811, a Convention met in New Orleans to draft a constitution and create a state. Its action resulted in the 1812 Louisiana State Constitution. The Preamble fixed the western boundary of the State as the middle of the Sabine River. Almost identical language to that found in the Congressional Enabling Act, above quoted, was used when it recited:

*"We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April 1803, between the United States and France, contained in the following limits, to wit: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude—thence due north to the Northernmost part of the thirty-third degree of north latitude"*⁸

The Congress of the United States passed an Act on April 8, 1812, for the admission of Louisiana into the Union,⁹ which repeats the Sabine boundary in substantially the same language as found in the 1811 Enabling Act and in the 1812 Louisiana Constitution:

"beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude"

During this period and for some time thereafter, as above mentioned, the western boundary of the Louisiana Purchase and the western boundary of the United States was in doubt. Negotiations continued between the United States and Spain from 1803 to 1819 relating

ments out of order, the House reversed the Speaker by a 53 to 56 vote and held Congressman Quincy's observations in order. Louisiana's Exhibit A, pp. 52-53.

⁸ Texas' Exhibit C, p. 1 (emphasis supplied).

⁹ 2 Stat. 701; Texas' Exhibit C, p. 2.

both to Florida and to Texas, and culminated in the 1819 Treaty.¹⁰ While the Treaty was signed by the United States on February 2, 1819, Louisiana's Exhibit A, page 69, indicates that it was not ratified by the King of Spain until October 24, 1820 or by the United States until February 10, 1821. By this agreement the United States relinquished all of Texas west of the west bank of the Sabine River, in exchange for Florida and the Spanish claim to the Oregon Territory. This agreement further provides: "All the islands in the Sabine . . . to belong to the United States" Louisiana's Exhibit A, p. 73.

Almost immediately the United States renewed its efforts to acquire Texas and in 1821, when Mexico declared its independence from Spain, the United States began negotiating anew for its purchase. Later, by an 1828 Treaty of Limits,¹¹ the United States and Mexico recognized the boundary of the 1819 Treaty with Spain. This Treaty of Limits also provided for the appointment of a boundary commission to run and mark the boundary line. This was not done. The United States continued to attempt to purchase Texas from Mexico and at one time indicated a willingness to pay as much as five million dollars.¹² In 1836 Texas declared its independence from Mexico and was recognized as an independent nation by the United States on March 1, 1837. In 1838 the Sabine portion of the boundary agreed upon with Spain in the Treaty of

¹⁰ Treaty of Amity, Settlement, and Limits (between the United States and Spain), February 22, 1819; 8 Stat. 252. See Louisiana's Exhibit A, pp. 69-90.

¹¹ Treaty of Limits (between the United States and Mexico), January 12, 1828; 8 Stat. 372. See Louisiana's Exhibit A, pp. 94-96.

¹² See II T. M. MARSHALL, A HISTORY OF THE WESTERN BOUNDARY OF THE LOUISIANA PURCHASE, 1819-1841 at 87 (1914), Louisiana's Exhibit M, a book recommended to the Special Master by both States.

1819 and with Mexico in 1828 was ratified by the Republic of Texas and the United States, who agreed "to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulph of Mexico, to the Red river."¹³

The boundary was so marked. The report of the boundary commission is found in Louisiana's Exhibit A, pp. 120-64, 221-38. Texas was annexed into the United States in 1845 and admitted as a State on December 29, 1845.¹⁴

On March 16, 1848, the Louisiana Legislature passed a resolution requesting consent of the Congress to extend Louisiana's western boundary to the western bank of the Sabine. The resolution provided:

"Whereas the Constitution and the Laws of the State of Louisiana, nor those of any other State or Territory, extend over the waters of the Sabine River, from the middle of said stream to the western bank thereof; and that it is of importance to the citizens living contiguous thereto, and to the people in general, that the jurisdiction of some State should be extended over said territory, in order that crimes and offences committed thereupon should be punished, and wrongs and damages inflicted should be redressed in a speedy and convenient manner:

Therefore, be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: 1st. That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (when- ever the consent of the Congress of the United

¹³ Convention Between the United States of America and the Republic of Texas, for making the boundary between them, April 25, 1838; 8 Stat. 511. See Louisiana's Exhibit A, p. 97.

¹⁴ See 9 Stat. 108. For a concise historical analysis of this period in Texas' history, see *United States v. Louisiana*, 363 U.S. 1, 36-65 (1960).

States can be procured thereto), viz.: *Between the middle of the Sabine river and the western banks thereof, to begin at the mouth of said river, where it empties into the Gulf of Mexico, and thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the States of Texas.*

2d, *Be it further resolved, etc.: That our Senators be instructed, and our Representatives in Congress requested, to procure the passage of a law on the part of the United States, consenting to the extension of the constitution, and the jurisdiction of the laws of the State of Louisiana, over the territory in said river. . . .*"¹⁵

On March 18, 1848, the Texas Legislature passed a similar resolution, reading in part:

"Resolution of the Legislature of Texas, in favor of the passage of an act, extending the jurisdiction of that State over the Sabine pass, the Sabine Lake, and the Sabine river, April 17, 1848.

Joint Resolution instructing our Senators and requesting our Representatives in Congress to use their efforts to have a law passed to extend the jurisdiction of Texas over one half of Sabine pass, lake, and river.

SEC. 1. *Be it resolved by the Legislature of the State of Texas, That our Senators be instructed, and our Representatives in Congress be requested, to use their efforts to have a law passed by Congress, extending the jurisdiction of Texas over one half of the waters of Sabine lake, Sabine pass, and Sabine river, up to the 32° of north latitude.*"¹⁶

On July 5, 1848, Congress passed an Act giving its consent to the State of Texas to extend its eastern

¹⁵ Texas' Exhibit C, p. 3; Louisiana's Exhibit A, pp. 288-88A (emphasis supplied).

¹⁶ S. Misc. Doc. No. 123, 30th Cong., 1st Sess. (1848) (emphasis in original).

boundary from the west bank of the Sabine to the middle of that stream. The Act states:

"An Act giving the Consent of the Government of the United States to the State of Texas to extend her eastern Boundary, so as to include within her Limits one half of Sabine Pass, Sabine Lake, and Sabine River, as far north as the thirty second Degree of North Latitude.

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude."*¹⁷

The report of the United States Senate action on the bill states:

"Mr. Butler, from the Committee on the Judiciary, reported an act giving the consent of the Government of the United States to the State of Texas to extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake, and the Sabine River as far north as the 32° of north latitude.

"Mr. B. asked for the immediate consideration of the bill, and briefly explained its character. The boundary of the United States, it was known, embraced the Sabine River and lake to its western shore. The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore, belonged to the United States, and was not included in the State of Louisiana; therefore, the boundary of the State and that of the United States, was not identical. The bill before the Senate

¹⁷ 9 Stat. 245 (emphasis in original). See Texas' Exhibit C, p. 4.

gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas, for the purpose of enabling the latter to extend her criminal jurisdiction to the Louisiana boundary. There could be no objection to the bill, and he hoped it would now be passed.

"Mr. Johnson, of La., and Mr. Downs in behalf of the State of Louisiana, expressed their acquiescence in the arrangement.

"The bill was then read a third time and passed."¹⁸

IV. IS TEXAS ENTITLED TO THE WESTERN HALF OF THE SABINE RIVER BY REASON OF THE FOREGOING FACTS?

It is Texas' claim that the February 20, 1811 Act of Congress, enabling Louisiana to become a State, the 1812 Louisiana Constitution, the 1812 Congressional Act admitting Louisiana as a State, and the 1848 Congressional Act permitting Texas to extend its boundaries to the middle of the Sabine, all conclusively establish that the boundary between Texas and Louisiana is the "middle" of the Sabine. It is Louisiana's contention that the Treaty of 1819 (between the United States and Spain), the Treaty of 1828 (between the United States and Mexico), and the Treaty of 1838 (between the United States and the Republic of Texas), all establish the western bank of the Sabine as the boundary between the two States. It is Louisiana's position that the United States was negotiating on behalf of Louisiana in drafting the various treaties and that when the treaties established the western bank of the Sabine as the boundary between the United States and Spain, Mexico, and the Republic of Texas, respectively, Louisiana automatically extended its boundaries to that bank. It is also Louisiana's contention that since its boundaries were automatically extended to the western bank of the Sabine in 1819, Congress had no authority in 1848 to allow Texas to extend its boundaries to the middle of the Sabine.

Louisiana's position essentially hinges on the contention that the United States was negotiating on behalf of Louisiana when it enacted the Treaty of 1819 and the other treaties which followed. Your Special Master believes this contention is without merit. The Treaty of 1819 does not mention the State of Louisiana, nor do the extensive negotiations and commen-

taries surrounding the Treaty. The same is true of the Treaty of 1828 with Mexico and the Treaty of 1838 with the Republic of Texas, in that they adhered to the boundary described in the 1819 Treaty.

It is clear from reading the 1819 Treaty that the agreement was made by the United States, as a sovereign entity, not as an agent acting on behalf of Louisiana. Clearly, the State of Louisiana could not have negotiated a boundary dispute, inasmuch as that right is within the exclusive province of the national government. United States Constitution art. I, § 10, cl. 1; art. II, § 2.

The 1819 Treaty states, in part:

*"The boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea, continuing north, along the western bank of that river, to the 32d degree of latitude"*¹⁹

The 1828 Treaty with Mexico was an agreement by the parties over the location of the boundary line "between the two countries." The Treaty consistently speaks of the United States as a sovereign representing its own interests, not those of any particular State such as Louisiana.

There was no reason for the United States to have been acting on behalf of the State of Louisiana. Both before and after the Treaty of 1819 with Spain, the United States made claim to Texas as a part of the Louisiana Purchase and also attempted to purchase it. Therefore, at the time of the February 20, 1811 Act enabling Louisiana to become a State, the United States was claiming a vast territory west of the Sabine, which might become a State. To establish the Louisiana

¹⁹ Louisiana's Exhibit A, pp. 71-73 (emphasis supplied).

boundary in the middle of the Sabine River was clearly in accordance with the policy and law of the United States relating to river boundaries between States and territories, so that any present or future States would be treated equally with respect to common boundary streams. This policy has been stated by the Supreme Court:

"[T]he United States early adopted and constantly has adhered to the policy of regarding lands under navigable waters in acquired territory, while under its sole dominion, as held for the ultimate benefit of future States, and so has refrained from making any disposal thereof, save in exceptional instances when impelled to particular disposals by some international duty or public exigency. It follows from this that disposals by the United States during the territorial period are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain." *United States v. Holt State Bank*, 270 U.S. 49, 55 (1926). See also *Shively v. Bowlby*, 152 U.S. 1, 49, 57-58 (1894).

Thus it would appear that the United States was holding the western half of the Sabine as a territory of its own, to be given to Texas should it become a part of the United States. This was ultimately accomplished by the Congressional action of 1848, which specifically stated that the western half of the Sabine River belonged to the United States. Had it belonged to Louisiana, there would have been no need for Louisiana's Legislature to pass the resolution of March 16, 1848, which stated that the United States owned the western half of the Sabine. See Appendix A, Item (5). Louisiana's recognition of the United States' ownership of the western half of the Sabine is further shown by the express acquiescence of its United States Senators in the 1848 Congressional Act giving Texas that portion of the river. Appendix A, Item (7).

Louisiana argues that the United States could not possibly have exercised ownership over the west half of the Sabine because the area in controversy is a "slender strip of water—less than a stone's throw in width." Louisiana's Reply Brief, p. 13. This assertion ignores the realities of the situation. Although the Sabine River itself is only approximately 240 feet wide, Sabine Pass has an average width of 3,600 feet, while Sabine Lake has an average width of 34,000 feet in the major portion of its twenty-mile length. Thus the bed of the river, lake, and pass totals nearly 36,000 acres. This is more than one and one-half townships, making the fifty-six section area much more than a "slender strip of water." See Texas' Exhibit G, pp. 1-3.

Aside from any theory that the United States was acting on behalf of the State of Louisiana in 1819, Article IV, Section 3 of the United States Constitution states:

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State." (emphasis supplied)

This power of Congress over lands belonging to the United States is without limitation. *Alabama v. Texas*, 347 U.S. 272, 273, rehearing denied, 347 U.S. 950 (1954).

The fact that the territory in question here was finally established under the terms of a treaty does not alter the application of Article IV, Section 3. As stated by the Supreme Court in *Van Brocklin v. Tennessee*, 117 U.S. 151, 168 (1886):

"[P]ublic and unoccupied lands, to which the United States have acquired title, either by deeds of cession from other States, or by treaty with a foreign country, Congress, under the power conferred upon it by the Constitution, 'to dispose of and make all needful rules and regulations respecting the territory or other property of the United States,' has the exclusive right to control and dispose of, as it has with regard to other property of the United States; and no State can interfere with this right, or embarrass its exercise." (citations omitted)

The Sabine River limits of the territory which eventually became the State of Louisiana were specifically stated in the Congressional Act of February 20, 1811, as "a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude" This language was repeated in both the Louisiana Constitution of 1812 and the Congressional Act of April 3, 1812, which admitted Louisiana as a State. Thus, up until the Treaty of 1819 with Spain, it must be conceded that Louisiana's western boundary was the middle of the Sabine River. Because of Article IV, Section 3 of the Constitution, the only way Louisiana could have obtained the western half of the Sabine was by congressional action. Louisiana maintains that Senate approval of the 1819 Treaty was "congressional action" sufficient to satisfy Article IV, Section 3 of the Constitution. This assertion is based on the claim that the United States was acting on behalf of Louisiana in negotiating the 1819 Treaty. Since your Special Master believes this latter conten-

tion is without merit for reasons discussed above, the Senate's approval of the 1819 Treaty cannot be construed as congressional action sufficient to give Louisiana the western half of the Sabine River. Neither can it be said that the Congress "impliedly" gave its consent to Louisiana's ownership of the western Sabine because the 1848 Congressional Act expressly gave *Texas* the western half. In addition, the Senate report on the Act clearly states that the western half of the Sabine did *not* belong to Louisiana.

Louisiana claims that if the 1848 Congressional Act is constitutional, it was not a conveyance of title to the western half of the Sabine River, but was only designed to allow Texas to extend its criminal jurisdiction. Louisiana bases this contention on the Report of the U. S. Senate Judiciary Committee of June 29, 1848 (*Texas' Exhibit C*, p. 4). Louisiana specifically refers to one sentence from that Report: "The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas, for the purpose of enabling the latter to extend her criminal jurisdiction to the Louisiana boundary." However, your Master believes that the clear language of the July 5, 1848 Act refutes Louisiana's argument. The Act specifically consented to Texas' extending its eastern boundary, "so as to include within her limits" the west half of the Sabine River. This broad, inclusive language weighs heavily against the isolated comment found in the Committee Report. The Report itself repeats the Act's language that allowed Texas to "extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake, and the Sabine River"

Texas' ownership of the lands underneath the west half of the Sabine River, in addition to any jurisdiction

on the river, is also supported by the rule that a State has the ownership of lands beneath the navigable waters legally embraced within its boundaries. *Pollard's Lessee v. Hagan*, 44 U.S. (3 How.) 212, 229 (1845); *Martin v. Waddell*, 41 U.S. (16 Pet.) 367, 410 (1842).

The February 20, 1811 Act enabling Louisiana to become a State, the Louisiana Constitution of 1812, the Congressional Act of April 8, 1812, admitting Louisiana as a State, the March 16, 1848 Resolution of the Louisiana Legislature, and the July 5, 1848 Act of Congress, all establish the "middle" of the Sabine River as the boundary between Texas and Louisiana. Congress did not transfer the western half of the river to Louisiana at any time as required by Article IV, Section 3 of the United States Constitution. Under such circumstances, your Special Master concludes that Louisiana's claim to all of the Sabine River bed is without merit and that the western half of the Sabine River bed belongs to Texas.

V. PRESCRIPTION AND ACQUIESCENCE

In addition to Texas' claim to the western half of the Sabine River as a matter of law, arising from the controlling treaties and statutes, your Special Master believes Texas is entitled to the western Sabine because of the doctrine of prescription and acquiescence. "The rule, long-settled and never doubted by this court, is that long acquiescence by one state in the possession of territory by another and in the exercise of sovereignty and dominion over it is conclusive of the latter's title and rightful authority." *Michigan v. Wisconsin*, 270 U.S. 295, 308 (1926) (citations omitted). See also *Arkansas v. Tennessee*, 310 U.S. 563, 569 (1940); *Louisiana v. Mississippi*, 202 U.S. 1, 53-54 (1906); *Virginia v. Tennessee*, 148 U.S. 503, 522 (1893). Your Special Master believes that Texas has claimed a mid-Sabine boundary for over a century and Louisiana has acquiesced in that claim. The various acts of prescription and acquiescence are listed in detail in Appendices A through E, attached to this Report.

On or about November 27, 1941, Louisiana Governor Sam Jones sent a letter to the Governor of Texas, asserting that Louisiana owned to the west bank of the Sabine River (Louisiana's Exhibit B, pp. 1-12). Louisiana claims that this letter prevents the use of any acts after 1941 to show Louisiana's acquiescence in a mid-Sabine boundary. However, it should be pointed out that Governor Jones recognized that Louisiana might have lost its claim to the western bank of the Sabine because of acquiescence. See Texas' Exhibit C, p. 49; Texas' Exhibit G, pp. 72-73. In addition, the fact that Louisiana did not participate in any legal proceedings until over twenty-seven years after Governor Jones' letter to the Governor of Texas weighs against its claim that any acts after 1941 must be

disregarded. See Texas' Exhibit C, pp. 25-27a. The necessary inference from such cases as *Indiana v. Kentucky*, 136 U.S. 479, 509-10 (1890) and *Michigan v. Wisconsin*, 270 U.S. 295, 318-19 (1926), is that only legal proceedings can effectively assert a State's opposition to a rival State's dominion and sovereignty over disputed territory. Therefore, your Special Master believes that post-1941 acts do have some significance to the dispute here, even though your Master, in reaching his conclusion, has not accorded them as much weight as those occurring before that date. Texas has claimed a mid-Sabine boundary from at least 1848, when the Texas Legislature extended the State's eastern boundary to include the western half of the Sabine River. Appendix A, Item (8). Texas has assessed taxes on the western half of the Sabine since at least 1914, while, according to the evidence before your Special Master, Louisiana has *never* taxed the western half. Appendix E, Part (B). The taxing of disputed land is to be given considerable weight in determining whether a State has acquiesced in the other State's ownership of the land. *Vermont v. New Hampshire*, 289 U.S. 593, 615-16 (1933); *Michigan v. Wisconsin*, 270 U.S. 295, 306, 317 (1926).

Since 1911, Texas has extended the boundaries of its cities located on the Sabine and reclaimed certain submerged lands in the Sabine, such as Pleasure Island near Port Arthur, Texas. Appendix E, Part (C). From 1930 to 1940, Texas prepared ten maps and seven leases which asserted a mid-Sabine boundary. Since 1940, there have been forty-three such leases and thirteen such maps. Appendix C, Part I; Appendix B, Part I.

Probably the earliest acquiescence by Louisiana in a mid-Sabine boundary, after Texas became a State, was the Louisiana Senators' acquiescence in the 1848 Con-

gressional Act giving the western half of the Sabine River to Texas. The Senate record states that the Louisiana Senators "expressed their acquiescence in the arrangement." Appendix A, Item (7). Prior to that time, Louisiana had acknowledged a mid-Sabine western boundary in the Preamble to the Louisiana Constitution of 1812. Appendix A, Item (3). In addition, the Louisiana Legislature's Resolution of March 16, 1848, requesting Congress' consent to extend Louisiana's western boundary to the Sabine's western bank (Appendix A, Item (5)), shows that up to that time Louisiana did not claim to own the west half of the Sabine. Before 1941, Louisiana executed seven leases which extended only to the middle of the Sabine, and issued, alone or in conjunction with the United States Geological Survey, at least twenty-four maps which show a mid-Sabine boundary. Appendix C, Part II; Appendix B, Part III.

During this same period, the Louisiana Supreme Court issued two opinions which recognized the mid-Sabine boundary as the boundary between Texas and Louisiana,³⁰ and the Louisiana Legislature created at least one parish which was expressly limited to the eastern half of the Sabine River. Appendix B, Part III(A). From 1943 to 1959, Louisiana issued twenty-

³⁰ In *State v. Burton*, 105 La. 516, 29 So. 970 (1901) (Texas' Exhibit B, p. 86), the Louisiana Supreme Court reversed the conviction of a bootlegger operating on the western half of the Sabine River. In doing so, the court stated: "It cannot be contended that Louisiana courts have jurisdiction over Texas territory. . . . That the middle of the Sabine river is the boundary line between Louisiana and Texas, see act of congress approved March 26, 1804, . . . treaty between the United States and Spain made in 1819, Act. Cong. July 5, 1848; act of the legislature of Texas approved November 24, 1849, which act is under and in accordance with the act of congress of 1848; . . . preamble of the constitution of Louisiana of 1812."

This decision was reaffirmed in *State v. Burton*, 106 La. 732, 31 So. 291 (1902) (Texas' Exhibit C, pp. 21-22). See Appendix E, Part (E) (2).

two leases which extended only to the middle of the Sabine. Appendix C, Part II.

In addition, the federal government has recognized a mid-Sabine boundary between Texas and Louisiana. In 1848, Congress specifically gave the western half of the Sabine to Texas. Appendix A, Item (7). Prior to that time, Congress recognized Louisiana's western boundary as the middle of the Sabine in the 1811 Act enabling the people of Orleans to adopt a constitution (Appendix A, Item (2)), and the Act of April 8, 1812, for the admission of Louisiana into the Union. Appendix A, Item (4). As early as 1852, Congress made appropriations and authorizations for projects on the Sabine River which mention Texas as the State within which all or a portion of the projects were located. Appendix D, Part (A). From 1906 on, there are six Congressional acts in evidence, generally relating to bridges on the Sabine, which recognize a mid-Sabine boundary. Appendix D, Part (C).

From 1879 to 1940, there are at least twenty maps prepared by federal agencies which show either a mid-Sabine boundary between Texas and Louisiana or, in one instance, a boundary apparently on the east bank of the Sabine. Appendix B, Part II. After 1940, there are approximately thirty-five such maps in evidence. Such federal recognition of a disputed boundary has been given great weight by the United States Supreme Court. See, e.g., *Michigan v. Wisconsin*, 270 U.S. 295, 307 (1926); *Louisiana v. Mississippi*, 202 U.S. 1, 56-57 (1906).

All this leads your Special Master to conclude and to report that Texas, by reason of the doctrine of acquiescence and prescription, has further established its claim to the west one-half of the Sabine River.

VI. THE THALWEG DOCTRINE

Louisiana contends that if Louisiana does not own to the west bank of the Sabine, the thalweg doctrine should be applied. Thus, it would become necessary to determine not the geographic middle of the Sabine but rather its deepest and most navigable channel. A claimed exception to this is where there are islands in the river belonging to Louisiana. At such places Louisiana claims the thalweg would be the middle of the channel on the westernmost side of the westernmost island.

Your Special Master, however, does not believe that the thalweg doctrine should apply in this case for the reason that Louisiana's boundary, as above shown, was and is the geographic middle of the river and the doctrine of acquiescence and prescription applies with reference to what may be termed the west half of the river, as shown by the leases, the building of bridges and the other matters hereinabove mentioned.

The parties have stipulated before the Special Master that the Sabine River was and still is navigable.²¹ The evidence bears out its navigability in 1838-1840 for distances of 300 to 500 miles from the Gulf. See Louisiana's Exhibit J and Exhibit A, p. 130. There is no evidence of recent navigation for such distances. There is evidence of great use of the Sabine-Neches Canal, which is a part of the Intracoastal Waterway through Sabine Pass and Lake. The canal is located on the Texas side and in part was constructed through Texas mainland. See Texas' Exhibit A, maps 23, 25 and 27. Its construction resulted in the forming of some man-made islands.

The general rule is that when a navigable river constitutes the boundary between two States, the juris-

²¹ See Special Master's pretrial order of September 9, 1970.

diction of each State extends to the middle of the main channel of the river. This is known as the "thalweg" or main navigable channel doctrine. The doctrine is based upon equitable considerations and is intended to preserve to each State its equal right in the navigation of the stream *Iowa v. Illinois*, 147 U.S. 1, 7-8 (1893); *Georgia v. South Carolina*, 257 U.S. 516, 521 (1922); *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1940). Where navigation of the river is not involved, there is no reason to apply the thalweg doctrine and "in the absence of convention or controlling circumstances to the contrary, each takes to the middle of the stream." *Georgia v. South Carolina*, *supra*.

Both States concede that navigation on the Sabine River has always been open to each by reason of Section 12 of the Act of Congress dated February 15, 1811 (Texas' Exhibit G, pp. 47-50), the Congressional Act admitting Louisiana as a State (Texas' Exhibit C, p. 2), and the Treaty of 1819 between the United States and Spain (Louisiana's Exhibit A, p. 73), which was carried forward in the Treaty with Mexico in 1828 (Louisiana's Exhibit A, pp. 94-96) and the Treaty with the Republic of Texas in 1838 (Louisiana's Exhibit A, p. 97). Both States can use the Intracoastal Waterway, including the Sabine-Neches Canal. Since the right to navigation of the Sabine is not in issue here, having at all times been open to the citizens of each State, application of the thalweg doctrine is unnecessary.

In addition, the thalweg doctrine does not apply "when it is established that there has been acquiescence in a long-continued and uninterrupted assertion of dominion and jurisdiction over a given area." *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1940). See also *Arkansas v. Tennessee*, 246 U.S. 158, 170 (1918);

Iowa v. Illinois, 147 U.S. 1, 10 (1893). As shown above, Texas has exercised long and continued dominion and jurisdiction over the western half of the Sabine, thus making the thalweg rule inapplicable.

Since Congress had provided for free navigation on the Sabine as early as February 15, 1811 (Texas' Exhibit G, pp. 47-50), the only logical meaning to the words "thence by a line to be drawn along the middle of said river," found in the congressional act which defined Louisiana's western boundary (Louisiana's Exhibit A, pp. 66-68), would be a *geographic* middle. This view is further supported by the Act passed by the Congress on July 5, 1848, giving consent for Texas to "extend her eastern boundary so as to include within her limits *one half* of Sabine Pass, *one half* of Sabine Lake, also *one half* of Sabine River" (emphasis supplied). "One half" can only indicate a *geographic* half of the Sabine, and thus has no relation to a thalweg or main channel of navigation.

Your Special Master therefore reports and recommends that the thalweg doctrine be held inapplicable to the Sabine River in the determination of the boundary between the States of Louisiana and Texas and that the boundary be established as the *geographic* middle of the river. In determining this *geographic* middle, which is defined as an imaginary line drawn equidistant between the shores of the river, the parties have by leases for oil and shells, particularly in Sabine Pass and Sabine Lake, determined such middle boundary. The U.S. Geological Survey has prepared maps of the area for many years. These maps have been used extensively both by Texas and Louisiana as the basis for their maps. Most of these maps have shown the boundary between the States as the *geographic* middle of the Sabine. The Special Master

would recommend, if the parties are unable to agree upon the exact boundary within a limited time to be fixed by the Special Master, that such boundary be determined by a competent surveyor selected by the Special Master, with such assistance as the surveyor deems necessary, with authority to the surveyor to use such leases, Geological Survey maps, and other guidelines, including an on-the-ground survey, as would usually be used by surveyors in making such a determination of the geographic middle. The Special Master recommends, if he is authorized to employ a surveyor as above recommended, that your Master and the surveyor be empowered to employ the U.S. Geological Survey or representatives thereof to assist in such survey if such employment would appear advantageous. The Special Master further recommends that a written report of such survey be delivered to the Special Master for filing at the earliest practicable date with this Court, together with your Master's report thereon, and that the cost of the survey be apportioned equally to the two States which are parties herein.

VII. ISLANDS

Testimony, both oral and documentary, has been introduced relating to islands in the Sabine River. The early maps and the 1839-1840 survey report show a limited number of islands in the river.

It is the conclusion of the Special Master that all islands which were in the river in 1812 belong to the State of Louisiana. This conclusion is based upon the language of the February 20, 1811 Enabling Act (Appendix A, Item (2)) and the April 8, 1812 Act creating the State of Louisiana. Appendix A, Item (4). The language "including all islands" is clear and unambiguous. There are no exceptions. Your Special Master concludes that it was the intent of the Congress to grant the islands in the Sabine to Louisiana and, except as some may have been lost by acquiescence, your Master recommends that it be determined that all islands in the Sabine on April 8, 1812, the date of the passage of the Act admitting the State of Louisiana into the Union, belong to Louisiana.

The problem is to determine whether any of the islands now in the river were in existence in 1812. The earliest maps in evidence showing islands are the result of the 1839 survey and are dated 1840. It is the contention of Louisiana that in the absence of other evidence the Special Master and this Court should presume that islands in existence in 1840 were in existence in 1812.

Another problem confronting the Special Master is evidenced by Louisiana's Exhibit K, p. 5, which shows that in 1840 there was an island at the mouth of the Neches River. Texas' Exhibit A, p. 25, which is a 1957 map, shows an island in the same general location known as Dooms Island, and sometimes called Johns

Island. There is evidence that this island does not exist today. See testimony of Robert A. Bowers, New Orleans Hearing Transcript, pp. 243-300. However, Louisiana claims it can be located. The Special Master is of opinion, if this Report is approved, that it will be necessary for the Master to make an actual inspection of the area either by boat or by helicopter, or by such other means as seems advisable, to actually determine the islands which now exist and which, if any, of the existing islands in the west half of the river were in existence in 1812. As to islands in the east half of the river only, since Texas makes no claim to their ownership, it would be unnecessary to determine whether they existed in 1812 or have formed since. As to islands in the west half of the river which have been formed naturally or artificially since 1812, they would, your Master believes, belong to Texas if the boundary is determined to be the geographic middle of the stream.

Your Special Master would recommend that, as to any islands in the west half of the Sabine River shown to exist at the time of the earliest credible map and nearest the date of 1812, it be presumed that they existed in 1812 but that the matter be open to the introduction of further evidence by the parties if there are surveys, reports, or ancient documents from which the location of islands at or near the year 1812 can be determined and that the Master's findings thereon be the subject of a special and separate report.

Your Special Master further believes that the doctrine of acquiescence and prescription is properly applicable to any islands in the river. If there are islands on the west side of the middle of the Sabine River, possession of which is shown by the evidence to have been in the Spanish or Mexican governments,

in the Republic of Texas, or in the State of Texas, since 1812, the doctrine of acquiescence and prescription should properly be applicable to such islands. Your Special Master refers particularly to the islands, if any, at the mouth of the Neches River and at the mouth of the Sabine River, and believes that a further hearing should be had and a report filed on the matter of acquiescence by the State of Louisiana in Texas' ownership and possession as to all islands in the river located on the west side of the middle of the Sabine, which are found to have existed in 1812 when Louisiana became a State.

Certain of the maps show what are known as oyster reefs or shell banks, particularly in Sabine Pass and Lake. The Special Master does not believe the oyster reefs or shell banks are islands and that the ownership of such reefs, and banks, if any, is to be determined by whether they are on the east or west side of the geographic middle of the river.

A school boy would define an island as a body of land entirely surrounded by water. This Court, in *United States v. California*, 382 U.S. 448, 449 (1966), has approved a definition reading: " 'Island' means a naturally-formed area of land surrounded by water, which is above the level of mean high water." The Special Master believes in determining and reporting whether an island exists in the Sabine River that such definition should be made the basis of the determination and so reports and recommends.

VIII. SUMMARY OF RECOMMENDATIONS

Your Special Master recommends in summary that an order be entered by the Supreme Court of the United States finding and determining:

- 1) That the United States Supreme Court has jurisdiction of this case and of the parties;
- 2) That the United States of America is not a necessary party to this case;
- 3) That the motion for summary judgment filed by the State of Texas be overruled;
- 4) That the "geographic middle" of the Sabine River is the true and correct boundary between the States of Louisiana and Texas;
- 5) That the *thalweg* doctrine is inapplicable to the Sabine River;
- 6) That a surveyor be selected and employed by the Special Master to determine the "geographic middle" of the Sabine River, Lake and Pass, unless within 30 days from the date of the order of the United States Supreme Court approving the Special Master's report, if it is approved, the parties have agreed upon such "geographic middle";
- 7) That all islands in the Sabine River on April 8, 1812, when Louisiana was admitted to the Union as a State, be awarded to the State of Louisiana subject to the right of the State of Texas to make claim to any such islands by reason of acquiescence and prescription; that all islands formed in the east half of the Sabine River since 1812 be awarded to the State of Louisiana and that all islands formed in the west half of the river since 1812 be awarded to the State of Texas; that the Special Master take evidence as to the

now existing islands in the Sabine River, which were in existence on April 8, 1812, and at the same hearing take evidence on the claim of Texas by acquiescence and prescription to any such islands, and report to this Court as to the existence of such islands, if any, and the right of the State of Texas thereto;

8) That the costs herein be taxed one-half to plaintiff and one-half to defendant and that no costs be taxed for the services of the Special Master herein;

9) That at the conclusion of all of the hearings the Special Master file a report setting forth the amount of money advanced by the parties for the payment of costs and expenses pursuant to the orders of the Special Master and of the disbursement thereof for approval by the Court, unless the parties have approved in writing the Special Master's report as to the disbursement of said moneys.

Respectfully submitted,

ROBERT VAN PELT
Special Master



APPENDIX A

Acts Prior to 1850

(1) There is in evidence an Act, claimed by Louisiana to be Act 218 of the Third Legislature, Orleans Territory, 2d Session (February 16, 1811), enabling the citizens of the Territory of Orleans to apply for statehood, which limits the Territory to the middle of the Sabine River. However, the Act states "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*" and is signed by the U. S. President James Madison. Therefore, it is uncertain whether the Act was actually an Orleans Territory Act or was only printed in the Territory Legislative Session Laws.

There is a dispute over the translation of the boundary language in the so-called Act 218, from the original French into English. The Louisiana version (Louisiana's Exhibit A, pp. 34-38) states: "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its lands to the 32d deg. of lat. . . ."

The Texas version (Texas' Exhibit L) reads: "beginning from the mouth of the Sabine River, from this point by means of an imaginary line in the middle of the river, all the land which is located within the said line as far as 32° latitude"

(2) The United States Congress passed an Act on February 20, 1811 (Louisiana's Exhibit A, pp. 66-68), which enabled the people of the Territory of Orleans to adopt a constitution, form a government, and apply for admission into the Union. The Act gave the Sabine limits of the Territory as follows: "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude"

(3) The Preamble to the Louisiana Constitution of January 22, 1812 (Texas' Exhibit C, p.1) contains the following limitation: "We, the Representatives of the People of all that part of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April

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1803, between the United States and France, contained in the following limits, to wit: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude"

(4) The Act for the admission of Louisiana into the Union (April 8, 1812; 2 Stat. 701; Texas' Exhibit C, p. 2) also fixed the State's western boundary in the middle of the Sabine River: "beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude"

(5) On March 16, 1848, the Louisiana Legislature passed a resolution (Texas' Exhibit C, p. 3; Louisiana's Exhibit A, pp. 288-88A) requesting the consent of Congress to extend Louisiana's western boundary to the western bank of the Sabine. The Resolution stated:

"Whereas the Constitution and the Laws of the State of Louisiana, nor those of any other State or Territory, extend over the waters of the Sabine River, from the middle of said stream to the western bank thereof; and that it is of importance to the citizens living contiguous thereto, and to the people in general, that the jurisdiction of some State should be extended over said territory, in order that crimes and offenses committed thereupon should be punished, and wrongs and damages inflicted should be redressed in a speedy and convenient manner:

"Therefore, be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: 1st, That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto), viz.: Between the middle of the Sabine river and the western banks thereof, to begin at the mouth of said river, where it empties into the Gulf of Mexico, and thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the State of Texas. . . ." (emphasis in original)

(6) On March 18, 1848, the Texas Legislature passed a resolution similar to that passed by Louisiana:

"Be it resolved by the Legislature of the State of Texas, That our Senators be instructed, and our Representatives in Congress be requested, to use their efforts to have a law passed by Congress, extending the jurisdiction of Texas over one half of the waters of Sabine lake, Sabine pass, and Sabine river, up to the 32° of north latitude." S. Misc. Doc. No. 123, 30th Cong., 1st Sess. (1848).

(7) On July 5, 1848, Congress passed an Act giving its consent to the State of Texas to extend its eastern boundary from the west bank of the Sabine to the middle of that stream. The Act states:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude." Texas' Exhibit C, p. 4 (emphasis in original).

The report of the Senate action on the bill states:

"Mr. Butler, from the Committee on the Judiciary, reported an act giving the consent of the Government of the United States to the State of Texas to extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake, and the Sabine River as far north as the 32° of north latitude.

"Mr. B asked for the immediate consideration of the bill, and briefly explained its character. The boundary of the United States, it was known, embraced the Sabine River and lake to its western shore. The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore, belonged to the United States, and was not included in the State of Louisiana; therefore, the boundary of the State and that of the United States, was not identical. The bill before the Senate gives the half of the river beyond the boundary of the State of

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Louisiana to the State of Texas, for the purpose of enabling the latter to extend her criminal jurisdiction to the Louisiana boundary. There could be no objection to the bill, and he hoped it would now be passed.

"Mr. Johnson, of La., and Mr. Downs in behalf of the State of Louisiana, expressed their acquiescence in the arrangement." (emphasis supplied) Texas' Exhibit C, p. 4, Henry Johnson and Solomon W. Downs were Louisiana's Senators in the 30th Congress, March 4, 1847, to March 3, 1849. BIOGRAPHICAL DIRECTORY OF THE AMERICAN CONGRESS, 1774-1961 at 146 (1961).

(8) On November 24, 1849, pursuant to the congressional consent given on July 5, 1848, the Texas Legislature extended the State's eastern boundary to include the western half of the Sabine:

"Be it enacted, etc., That in accordance with the consent of the congress of the United States, given by an act of said congress, approved July 5, 1848, the eastern boundary of the State of Texas be, and the same is hereby extended so as to include within the limits of the State of Texas the western half of Sabine pass, Sabine lake and Sabine river from its mouth as far north as the thirty-second degree of north latitude, and that the several counties of this state, bounded by said Sabine pass, Sabine lake and Sabine river from its mouth as far north as the thirty-second degree of north latitude, shall have and exercise jurisdiction over such portions of the western half of said pass, lake and river as are opposite to said counties respectively; and this act shall take effect from and after its passage." 2 Sayles Early Laws of Texas 1846-1866 at 207, art. 1919.

APPENDIX B

Maps

In *Louisiana v. Mississippi*, 202 U.S. 1, 57 (1906), the United States Supreme Court pointed out that maps made by the United States General Land Office, as well as maps made by the States themselves, can help establish whether a particular State has claimed a certain boundary over a period of years and the other State acquiesced in that line. See also *Michigan v. Wisconsin*, 270 U.S. 295, 307, 316-17 (1926).

The following is a chronological list of maps prepared by (1) the State of Texas; (2) the various agencies of the United States government; and (3) the State of Louisiana, which show the geographic middle, or at least "mid-stream", boundary between the two States.

I. MAPS PREPARED BY THE STATE OF TEXAS

(1) *August, 1886*. Louisiana's Exhibit F, p. 4. This is a Texas General Land Office map of Orange County, Texas, showing the county's eastern boundary on the west bank of the Sabine River.

(2) Louisiana's Exhibit F, p. 5. This is a map of Shelby County, Texas, showing that county's eastern boundary on the west bank of the Sabine. No date is given.

(3) 1896. Louisiana's Exhibit F, p. 1. This exhibit is a photostat of several maps and a printed history of Texas and its geographical subdivisions with statistics, both historical and comparative. It appears to have been prepared by Z. I. Fulmore of Austin, Texas. There is no date on the exhibit but from the listing of Governors it would appear to have been made shortly after 1896. Louisiana claims the map was certified true and correct by the Commissioner of the Texas General Land Office. However, the map sheet itself bears no such certification. Although indistinct, one of Exhibit F's maps entitled "Texas since 1850" apparently has the Texas-Louisiana boundary marked on the west bank of Sabine Lake. In addition, the sheet contains this notation:

"1819. The present boundary line between Texas and Louisiana, Arkansas, Indian Territory and Oklahoma was fixed by treaty between the United States and

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Spain in 1819. By this treaty the United States gave up all her territory west of the 100th meridian as far north as the Arkansas river, and Spain gave up her territory east of the Sabine river, and the 'Neutral Ground' became a part of Louisiana. This was ratified in 1822 by Mexico. The boundaries so adjusted remained undisputed."

(4) *July 1, 1930.* A map prepared by the Texas State Highway Commission entitled "Official Map of the Highway System of Texas." This map shows the Texas-Louisiana boundary in the middle of Sabine Lake. Texas' Exhibit F, Map 67.

(5) Two maps apparently prepared by the United States Department of Interior, U. S. Geological Survey, with the cooperation of the State of Texas, dated "Edition of 1931," showing the Terry and Orange Quadrangles in Texas. The maps show the middle of the Sabine as the boundary between Texas and Louisiana. Texas' Exhibit A, Maps 16 & 17.

(6) 1935. Maps 38-40 (Texas' Exhibit F) are Sheets 1, 4, and 7 of plans which, according to the Index to this exhibit, were approved by both the Texas and Louisiana Highway Departments for the Sabine River Bridge at Logansport, Louisiana. The sheets show a State boundary in the center of the Sabine River.

(7) In layout plans for a proposed Sabine River Bridge on Texas highway 21 and Louisiana highway 6, in the area of the Pendleton Ferry, the river boundary between the States is shown as the middle of the Sabine. The two maps showing this bear a revision of 4-5-36. Texas' Exhibit F, Maps 41 & 42. Map 43, dated April, 1936, is a layout for this particular bridge.

(8) There is a series of maps in Texas' Exhibit F, Maps 68-81, showing a mid-Sabine boundary along the various Texas counties adjoining that river:

(a) Map 68 is a map of Panola County, Texas, prepared by the Texas State Highway Department in cooperation with the United States Department of Agriculture, which shows a mid-Sabine boundary between Texas and Louisiana. This is a 1936 map. Map 69 is a newer edition of this map, dated 1951 but showing "State highways revised to January 1,

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1956." It also shows the state boundary in the middle of the Sabine.

(b) Map 70 is a 1936 map of Shelby County, Texas, showing a mid-Sabine boundary. Map 71 is a 1954 update of Map 70.

(c) Map 72 is a 1936 Sabine County map, with the Texas-Louisiana boundary being the center of the Sabine. Map 73 is a 1953 revision of Map 72, also showing a centerline boundary.

(d) Maps 74-75 are 1936 general highway maps of Jasper and Newton Counties in Texas, again showing a mid-Sabine boundary. The 1954 revision of the Newton County map, Maps 76-77, also shows a mid-Sabine boundary.

(e) Map 78 is a 1936 highway map of Orange County, Texas. Map 79 is a revision of Map 78, also showing the middle-Sabine boundary.

(f) Map 80 is a 1936 map of Jefferson County, Texas, again clearly showing the center of the Sabine as the Texas-Louisiana boundary. Map 81 is a 1954 revision of Map 80, showing the same boundary.

(9) *May 10, 1949.* Map 6 (Texas' Exhibit F) shows certain state highway improvements in both Texas and Louisiana, pursuant to a federal aid project. The map shows the Texas-Louisiana boundary as the middle of the Sabine.

(10) *September 2, 1950.* Map 30 (Texas' Exhibit F) is a map of the Sabine River leases in Orange County, Texas. The map was prepared by the Texas General Land Office and shows a geographic middle boundary in the Sabine.

(11) 1953. Map 31 (Texas' Exhibit F) is a map of Orange County, Texas and Calcasieu Parish, Louisiana, Survey Plat of Phoenix Lake Field, showing the middle of the Sabine as the boundary line. The map is dated 1953 and, according to the Index to Exhibit F, it is from the Texas General Land Office.

(12) *March 6, 1956.* Map 32 (Texas' Exhibit F) is a map of the west half of Sabine Lake prepared by the Texas General Land Office. A revised map showing this area is found in

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map 33, dated December 17, 1959. At the New Orleans hearing, Hatley N. Harrison, Jr., Chief of the Lands and Surveys Division of the Louisiana State Land Office, claimed that the boundary line shown in map 33 is not in the equidistance or middle of Sabine Lake. New Orleans Transcript, pp. 378-82. But see Transcript, pp. 436-41 and Texas' Exhibit G, pp. 1-3.

(13) 1962. Map 65 (Texas' Exhibit F) shows a portion of a federal aid project (see Map 64, dated 1962), which indicates that the Louisiana State line ends in the middle of the Sabine River. According to the Index to Exhibit F, these are the specifications for Louisiana and Texas "State Line" signs to be placed on the bridge at the center of the river. The pictures of these signs are found in Texas' Exhibit E, p. 100.

(14) November, 1963. Map 66 (Texas' Exhibit F) was apparently prepared by the "Sabine River Authorities of Texas and Louisiana," for the Toledo Bend Dam and Reservoir Project. The map clearly shows the dividing line between the two States as the middle of the Sabine. However, this map was prepared as a result of the Sabine River Compact between Texas and Louisiana, which received the approval of Congress. Louisiana's Exhibit A, pp. 351-54. Article IX of the Compact specifically states:

"This Compact is made and entered into for the sole purpose of effecting an equitable apportionment and providing beneficial uses of the waters of the Sabine River, its tributaries and its watershed, without regard to the boundary between Louisiana and Texas, and nothing herein contained shall be construed as an admission on the part of either State or any agency, commission, department or subdivision thereof, respecting the location of said boundary; and neither this Compact nor any data compiled for the preparation or administration thereof shall be offered, admitted or considered in evidence, in any dispute, controversy or litigation bearing upon the matter of the location of said boundary.

"The term 'Stateline' as defined in this Compact shall not be construed to define the actual boundary between the State of Texas and the State of Louisiana."

Because of this provision, your Master believes that any acts done pursuant to the Compact cannot be used to show

Louisiana's acquiescence in a mid-Sabine boundary between the two States. At least four maps in evidence were made pursuant to this Compact. They are found in Texas' Exhibit F, maps 44, 45, 46, and 66.

(15) November 9, 1968. Map 46 (Texas' Exhibit A) is a map of Port Arthur, Texas and that city's property on Pleasure Island and in Sabine Lake. The map was prepared by the Texas General Land Office and clearly shows the middle of Sabine Lake as the boundary between the two States.

(16) 1970. Map 37 (Texas' Exhibit F) is a 1970 edition of the Texas State Highway Map showing the mid-Sabine boundary.

II. MAPS PREPARED BY THE UNITED STATES

Louisiana claims that the maps prepared by either the federal agencies or Louisiana itself should not be given any weight since the map makers never "intended" that the maps be used for this purpose. See, e.g., Louisiana's Reply Brief, pp. 59-60. However, the fact that Louisiana officials claim that the making and using of their maps which portray the geographic center as the boundary line was not intended to establish the boundary is not the relevant point. A mid-stream boundary on these various maps shows the officials' recognition of the boundary line, irregardless of what their intent was when making the map. Obviously, none of the maps were prepared with the express purpose of establishing what the Texas-Louisiana boundary was, and thus the "intent" of the makers only concerned what the particular map concerned, for example, shell leases. However, this does not mean that the map cannot be used to show that the map makers recognized the middle of the Sabine as the boundary. Thus the maps are not used to fix or establish the true boundary, but are evidence of prescription to and acquiescence in such a line. See *Michigan v. Wisconsin*, 270 U.S. 295, 307, 316-17 (1926) ("[T]he line as claimed by Wisconsin has been, from the time of the Burt survey, accepted as the true boundary by the United States and, in its surveys, plats and maps, sales and other acts in respect of the public lands, continuously and consistently recognized, with the knowledge of

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Michigan and without protest on her part."); *Louisiana v. Mississippi*, 202 U.S. 1, 53-57 (1906).

In its Reply Brief, pp. 59-60, Louisiana states: "Cartographers, like other technicians, have definite tasks assigned to them, and they do not go beyond the limits of their instructions. We venture to say that no cartographer, without specific instructions to govern his thinking and actions to the contrary, would ever think of the possibility that a river boundary between equal sovereign states would be elsewhere than the usual happy medium, namely, the middle of the stream, although there are many such boundaries. Furthermore, not one of them would think of the 'thalweg' doctrine, though this is a well-known principle of law." In direct reply to this assertion, Texas has filed an affidavit from Robert H. Lyddan, the Chief Topographic Engineer of the U. S. Geological Survey (Texas' Exhibit G, pp. 16-17). In this affidavit Mr. Lyddan specifically refers to certain maps made by the Geological Survey in cooperation with the State of Louisiana (see Texas' Exhibit A, pp. 3-15, referred to under Item (9) in the list of Federal maps, *infra*), and also refers to Geological Survey maps of the Texas-Louisiana boundary in general. As stated in the affidavit:

"The location of the boundary line between Texas and Louisiana through the Sabine, as portrayed on Geological Survey maps, is based on statutes quoted and information contained in U. S. Geological Survey Bulletin 1212, 'Boundaries of the United States and the Several States,' and its predecessor editions published by the Geological Survey at various intervals since 1885." The 1966 edition of Bulletin 1212 is found as Texas' Exhibit H. The affidavit continues: "In our compilations, the boundary line is positioned one-half way between the stream banks as determined from aerial photography or in the center of the old river channel as can be determined by reference to original General Land Office plats or other evidence accepted on the ground.

"To the best of my knowledge the Geological Survey has not received any objections from either the State of Louisiana or the State of Texas to the manner in which these topographic maps position the boundary line above mentioned."

In addition, the U. S. General Land Office has recognized the boundary as claimed by Texas in two letters from that office dated June 25, 1903 and March 1, 1932. Texas' Exhibit B, pp. 43, 46-49. The document referred to in the last paragraph of the 1932 letter is an opinion of the Assistant Secretary of the Interior, found in Texas' Exhibit B, pp. 1-8, which also recognizes the "middle" of the Sabine as the State boundary.

Some of the following maps were prepared in conjunction with either Texas or Louisiana and thus are also presented under the listings of maps prepared by those respective States, that is, under either Part I, *supra*, or III, *infra*.

(1) 1840. Louisiana's Exhibit F, pp. 2-3. These are maps of the Sabine River showing the boundary between the United States and the Republic of Texas, as laid down in the survey in 1840. The boundary is shown on the west bank of the Sabine, but this is the western boundary of the United States, not Louisiana.

(2) 1879. Louisiana's Exhibit F, p. 6. This map of Louisiana was prepared by the United States General Land Office. Louisiana's western boundary is apparently marked on the east bank of the Sabine.

(3) 1896. Texas' Exhibit F, p. 1. This map was prepared by the U. S. General Land Office. The map is not entirely clear as to what the Louisiana-Texas boundary is, but the line in Sabine Lake would indicate that a mid-stream boundary was intended.

(4) 1913. Texas' Exhibit F, p. 4. A soil map of Texas prepared by the United States Department of Agriculture clearly shows a mid-Sabine boundary line between the two States.

(5) 1916. Texas' Exhibit A, p. 1. A map of the State of Louisiana prepared by the U. S. General Land Office clearly shows a geographic middle boundary in Sabine Lake. Presumably, on most of these maps the line in Sabine River would also be the geographic middle but the map is not detailed enough to show such a line.

(6) 1922. (Reprinted 1948). Texas' Exhibit A, p. 2. A U.S. Geological Survey map of Louisiana showing the boundary in the middle of Sabine Lake.

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(7) 1930. Texas' Exhibit F, p. 6. A U. S. General Land Office map also showing the boundary as the geographic middle of the Sabine.

(8) 1931, 1932. Texas' Exhibit A, pp. 16-17. These are two U. S. Geological Survey maps of the Terry and Orange Quadrangles in Texas, which show the boundary in the middle of the Sabine. These maps were prepared in cooperation with Texas.

(9) 1932-1936. Texas' Exhibit A, pp. 3-15. These are U. S. Geological Survey maps prepared in cooperation with the Louisiana Board of State Engineers which show a geographic middle boundary in the Sabine.

(10) 1944. Texas' Exhibit A, pp. 18-20. These are U. S. Geological Survey maps of three Quadrangles on the Sabine, all apparently showing a geographic middle boundary, although Maps 19 and 20 are somewhat unclear.

(11) 1947-1957. Texas' Exhibit A, pp. 21-25. These are U. S. Geological Survey maps prepared by the U. S. Army Map Service for the U. S. Corps of Army Engineers. The maps show the boundary in the middle of the Sabine. These maps, and all other similarly prepared by the U. S. Geological Survey, are challenged by Louisiana on the grounds that the maps are incorrect in that there never was any actual "mid-stream" boundary at any fixed point on the maps. See Hatley N. Harrison's testimony at the New Orleans hearing, Transcript, pp. 365-419. Essentially, Mr. Harrison's testimony was that there was no definite pattern to the Geological Survey's setting of the boundary, and thus the maps are unreliable. However, on cross-examination, Texas attempted to show that Harrison's method was not necessarily the only method that might be used. Transcript, pp. 436-41. See also Texas' Exhibit G, pp. 1-3.

(12) 1954-1960. Texas' Exhibit A, pp. 26-39. These again are U. S. Geological Survey maps showing the "approximate boundary" between Texas and Louisiana as the middle of the Sabine.

(13) 1959. Texas' Exhibit F, p. 36. This is a U. S. Corps of Engineers map of a Port Arthur, Texas project. The map clearly shows a geographic middle boundary in Sabine Lake.

(14) 1960-1969. Texas' Exhibit A, pp. 40-45. These are again U. S. Geological Survey maps portraying the middle of the Sabine as the Texas-Louisiana boundary.

(15) 1966. Texas' Exhibit F, pp. 34, 34-A. These are Sheets 1 and 2 of the U. S. Corps of Engineers' plans for "High Level Bridge" over the Sabine-Neches Waterway. Sheet 2 shows a mid-Sabine boundary.

(16) 1967. Texas' Exhibit C, pp. 71, 74-76, 82. This is a report prepared by the U. S. Corps of Engineers in cooperation with other Federal agencies and the States of Texas and Louisiana on the "Comprehensive Basin Study, Sabine River and Tributaries." The cover of the report (p. 71), Plate 1 (p. 74), Plate 6 (p. 75), Plate 7 (p. 76), and Plate 10 (p. 82), all show the State boundary in the middle of Sabine River.

(17) 1968. Texas' Exhibit A, p. 48. This is a map of Louisiana by the U. S. Geological Survey which shows a mid-Sabine boundary.

(18) 1970. Texas' Exhibit F, p. 35. This is a "Building Line Map" apparently prepared by the Port Arthur, Texas planning department and approved by the U. S. Corps of Engineers. Although it does not show a Texas-Louisiana boundary line, the fact that Port Arthur's activities in Sabine Lake were recognized by the federal government is of some significance.

NOTE: Geological Survey Bulletin 1212 (1966) (Texas' Exhibit H) contains a map (plate 1 found between pp. 34 and 35) and a historical diagram of Louisiana (p. 172) which show the boundary between Texas and Louisiana as the middle of the Sabine.

III. MAPS PREPARED BY THE STATE OF LOUISIANA

Because the maps made by Louisiana showing a mid-Sabine boundary fall under so many different categories, they will be listed under the following headings:

(A.) Parish Maps and the Acts creating those parishes;

(B.) United States Geological Survey maps which were made under contract with Louisiana and/or were publicly distributed by Louisiana State agencies;

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(C.) Other various maps prepared by Louisiana State agencies.

* * * *

(A.) Parish Maps and the Acts creating those parishes.

According to the 1968 Louisiana State Map (Texas' Exhibit A, p. 48), there are now six Louisiana parishes which border on the Sabine River: Cameron; Calcasieu; Beauregard; Vernon; Sabine; and DeSoto. It should be noted that only one parish (Sabine Parish, created in 1843, found in Item (4)) specifies the western bank of the Sabine as its western boundary. Conversely, only one parish (Beauregard Parish, created in 1912, found in Item (9)) has the middle of the Sabine as its western boundary. The rest of the parishes either specify the western boundary as the "boundary line of the United States" (Caddo and DeSoto; Items (2) and (5)), or simply name the "Sabine River" as the western point (Natchitoches, Calcasieu, Rapides, Vernon, and Cameron; Items (1), (3), (6), (7), and (8)).

(1) Natchitoches County

The Legislative Act. September 5, 1812. Texas' Exhibit C, p. 9. This Act states: "For the better defining the Limits of the County of Natchitoches. . . . That the County of Natchitoches shall be, and is hereby bounded as follows, viz: . . . on the west by the River Sabine and the line running north from the 32d degree of latitude on said River Sabine until it intersects the northernmost part of the 33d degree of latitude" (emphasis supplied).

(2) Caddo (Cado) Parish

The Legislative Act. January 18, 1838. Texas' Exhibit C, p. 11; Louisiana's Exhibit A, pp. 276-79. "To create and establish the Parish of Cado . . . That all that Territory within the following boundaries to wit: . . . thence by a due south line until it intersects a direct line running from said western bank of Bayou Pierre Lake to the Sabine river, where the line between townships nine and ten strikes the same, thence pursuing the boundary line of the United States to Red river and down the same to the point of beginning, do form and constitute a new Parish, to be called the Parish of Cado." (emphasis supplied).

(3) Calcasieu Parish

The Legislative Act. March 24, 1840. Texas' Exhibit C, p. 10. "thence along said line to the Sabine River, thence down the Sabine River to its mouth, thence along the sea Coast to the place of beginning, shall form and constitute a new Parish to be called the Parish of Calcasieu."

Maps. The only official parish maps in evidence are found in Texas' Exhibit F, pp. 11-29. The 1937 official parish map of Calcasieu (Texas' Exhibit F, p. 19) shows a mid-Sabine boundary, as does the 1970 edition (Exhibit F, p. 28).

(4) Sabine Parish

The Legislative Act. March 7, 1843. Texas' Exhibit C, p. 13; Louisiana's Exhibit A, pp. 284-87. The Act states: "That all that tract of country in the County of Natchitoches, bordering on the Sabine river, and bounded as follows, to wit: Starting at the point where the line running south from the most western part of Messrs. Boudrige and Vascoue's plantation, on Bayou la Bonnechasse, intersects the line between the Parish of Natchitoches and Caddo, *thence westwardly on said line to the western bank of the Sabine river; thence southerly, following the line between the United States and the Republic of Texas . . .*" (emphasis supplied). As noted above, this is the only act which extends a Louisiana parish's boundary to the western bank of the Sabine. This extension was not carried forward in later acts or maps concerning Sabine Parish. In 1871, in the act creating Vernon Parish from a portion of Sabine Parish (Item (7), *infra*), Vernon Parish's western boundary is described as "the Sabine River," with no mention of the west bank. An official Sabine Parish map published in 1937 (Texas' Exhibit F, pp. 13-14) shows Sabine Parish's western boundary as the middle of Sabine River. The 1970 edition (Texas' Exhibit F, pp. 22-23) shows the same boundary as the 1937 map.

Maps. As mentioned above, the 1937 map (Exhibit F, pp. 13-14) shows Sabine Parish's western boundary as the middle of the Sabine, as does the 1970 edition (Exhibit F, pp. 22-23). This 1970 map was based on 1969 information.

(5) DeSoto Parish

The Legislative Act. April 1, 1843. Texas' Exhibit C,

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p. 12; Louisiana's Exhibit A, pp. 280-83. "thence due west along said section line to the line between the United States and the Republic of Texas; thence due south along said line to the Sabine river; thence down said river to where the section line in the centre of township ten strikes the said river"

Maps. The official parish maps of 1937 (Texas' Exhibit F, pp. 11-12) show the western boundary of this parish as the middle of the Sabine River. The 1970 edition (Exhibit F, p. 21) also shows a mid-Sabine boundary.

(6) Rapides Parish

The Legislative Act. March 4, 1852. Texas' Exhibit C, p. 6. This act actually does not create Rapides Parish, but fixes that parish's boundary with the parishes of St. Landry and Calcasieu. The act does not give any definite line in or on the Sabine. It does state "to the mouth of the Anna-Coco creek where it empties into the River Sabine; thence up the Sabine to the Natchitoches lines."

(73 Vernon Parish

The Legislative Act. March 30, 1871. Texas' Exhibit C, p. 8. "That the following shall be the boundaries of the Parish of Vernon, viz: Commencing at the mouth of Bayou Toro, upon the Sabine River, thence up said Toro . . . thence west on said parish line to the Sabine River, thence up the Sabine River to the point beginning."

Maps. The official parish maps for 1937 are found in Texas' Exhibit F, pp. 15-16. The 1970 edition is found in the same exhibit, pp. 24-25. Both sets of maps show the middle of the Sabine as the parish's western boundary.

(8) Cameron Parish

The Legislative Act. March 15, 1870. Texas' Exhibit C, p. 7. "That the following shall be the boundaries of the Parish of Cameron, viz: Commencing at a point on the Sabine River, on the township line dividing townships eleven and twelve (11 and 12) south, thence east on said township line to the range line between ranges numbers two and three (2 and 3) west, thence south on said range line to the Gulf of Mexico, thence along the coast to the mouth of the Sabine River, thence up the Sabine River to the point of starting."

Maps. The 1937 parish maps (Texas' Exhibit F, p. 20) show Cameron Parish's western boundary as the middle of the Sabine. The 1970 revision also shows the mid-Sabine boundary (Texas' Exhibit F, p. 29).

(9) Beauregard Parish

The Legislative Act. June 12, 1912. Texas' Exhibit C, p. 5. This is the only legislative act which directly shows that the parish was limited to the middle of the Sabine River. The act specifically recognized the mid-Sabine boundary.

Maps. The 1937 parish maps (Texas' Exhibit F, pp. 17-18) show a mid-Sabine boundary for this parish, as does the 1970 edition (Exhibit F, pp. 26-27).

(B.) United States Geological Survey maps which were made under contract with Louisiana and/or were publicly distributed by Louisiana State agencies.

(1) In 1928, the Louisiana Legislature passed an act which authorized "the State Board of Engineers, cooperating with the Federal Government" to "make a topographical survey of this State and prepare and file with the Governor such report and map of said survey as will properly set forth the information to be derived therefrom, cause said report to be printed and distribute same to the members of the Legislature." Texas' Exhibit C, p. 37. On April 20, 1931, the Louisiana Chief State Engineer sent a form letter to all Louisiana parish "police juries" telling them that a new State map was being made and therefore the Board of State Engineers needed to know "detailed information attending boundary lines" of the various parishes, "which may be in dispute, if any." Texas' Exhibit C, p. 42.

The 1937 Official State Map of Louisiana, prepared pursuant to the 1928 Legislative Act, is found in Texas' Exhibit F, p. 8. It clearly shows the boundary between Texas and Louisiana in the middle of the Sabine.

On June 23, 1938, the Research Engineer for the Louisiana Board of State Engineers wrote a letter which discussed the Texas-Louisiana boundary. The letter states: "So it seems safe to conclude that the State Boundary is along the center of the Sabine, from its mouth upstream as far as its in-

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tersection with the 32° of north latitude, all as correctly portrayed on our New State Map of Louisiana, and on the Sabine Pass, Port Arthur and other Quadrangle Maps successively northward thereof, so far completed." Texas' Exhibit C, pp. 47-48. For these latter maps, see Texas' Exhibit A, pp. 3-15.

The 1937 State Map was also discussed in the "Report of the Board of State Engineers of the State of Louisiana to His Excellency, Samuel H. Jones Governor of Louisiana from January 1st, 1938 to January 1st, 1940." Texas' Exhibit C, pp. 43-46. In that Report, the Board states: "[T]he 1937 Edition of the New State Map is the best, most complete, precise and valuable map ever made of Louisiana."

(2) At least since 1931, the United States Geological Survey, in cooperation with the Louisiana State Board of Engineers, has made topographic maps of Louisiana which show the Texas-Louisiana boundary in the middle of the Sabine. Copies of the 1931, 1932, and 1940 contracts establishing this relationship are found in Texas' Exhibit G, pp. 18-23. These contracts provide that Louisiana could object if the work was not executed in a satisfactory manner. The agreements specifically state that "political boundaries" were to be shown on the maps (Exhibit G, pp. 20, 22). Copies of similar agreements for 1962 to 1964, and 1970 to 1972 are found in Texas' Exhibit C, pp. 84-86. See also pp. 87-88 of Texas Exhibit C for a history of such cooperative map-making with the federal government.

There is no specific listing, except in Texas' briefs, of the maps which were made pursuant to these contracts. However, the contracts themselves give something of a clue in that they state that the maps were to contain headings which showed that the United States Geological Survey and the State of Louisiana cooperated in preparing the maps. The maps in evidence which may be construed to have such a heading are: Texas' Exhibit A, pp. 3-15 (maps prepared from 1932 through 1936. See the second paragraph on p. 87 of Texas' Exhibit C concerning these 13 maps.); pp. 21, 23-30, 32-38, and 40-45 (maps covering 1947-1969). In addition to listing either the Louisiana Board of State Engineers

or the State of Louisiana, the maps found on pp. 21-30, 32-45 in Texas' Exhibit A contain the following note: "This map complies with national map accuracy standards—For Sale by U. S. Geological Survey, Denver 2, Colorado or Washington 25, D. C. *And by the State of Louisiana, Department of Public Works, Baton Rouge 4, Louisiana*" (emphasis supplied). See Texas' Exhibit B, pp. 40-42.

(3) Texas' Exhibit C, pp. 71-80, contains portions of a "Report on Comprehensive Basin Study Sabine River and Tributaries Texas and Louisiana," prepared in 1967 by the U. S. Corps of Engineers in cooperation with other federal agencies and the States of Louisiana and Texas. The Report states that Louisiana was represented by the Louisiana Department of Public Works (Exhibit C, pp. 77, 79). The cover page to the report and plates 1 and 6 (Exhibit C, pp. 71, 74, 75) show a mid-Sabine boundary between Texas and Louisiana. The "Index and Summary" to Texas' Exhibit C claims "The cover and 9 plates in Vol. 1 show the State boundary to be in the approximate geographic center of Sabine Lake." However, only the cover page and two plates are included in the exhibit.

In 1967, the Assistant Director of the Louisiana Department of Public Works wrote a letter concerning this Report (Texas' Exhibit C, p. 81). Accompanying the letter was a plate from the Report which showed a mid-Sabine boundary between the two States (Exhibit C, p. 82).

(C.) *Other Various Maps Prepared by Louisiana State agencies.*

(1.) *Louisiana State Board of Agriculture and Immigration*

(a.) 1907. Texas' Exhibit F, p. 2. On this map, a dark, heavy line was used to indicate the State boundary. It might be claimed that the Texas-Louisiana boundary in the Sabine River is shown on the west bank. However, the line in Sabine Lake and Pass clearly shows a geographic middle boundary.

(b.) 1913. Texas' Exhibit F, p. 5. Same as the 1907 map.

(2.) *The McKee Survey*

In 1930, the State of Texas leased approximately 1,900 acres

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in the west half of Sabine Lake to a H. L. McKee. The map showing this lease is found in Texas' Exhibit F, p. 7. According to the Index to Exhibit F, this map was approved by the Louisiana Board of State Engineers and the Louisiana State Land Office Register. The map contains such approvals but the State of Louisiana is not named. However, Louisiana does not dispute that the signatures are those of the Louisiana Chief State Engineer and the Louisiana Register. In addition, a memo from the files of the Louisiana Department of Public Works shows that it was the Louisiana Chief Engineer who approved the map (Texas Exhibit C, p. 38; see also pp. 49, 52-53 of that same exhibit). However, the same memo, dated April 25, 1939, states that Louisiana was claiming to the west bank of the Sabine.

The affirmation of the Chief State Engineer on the McKee Survey Map is especially interesting in that it states: "The Survey of April 11, 1930—Revised September 12, 1930 by J. C. McVea, has been found correct and is hereby approved." The McKee Map is also apparently mentioned in the Report of the Louisiana Board of State Engineers for April 1, 1930 to April 1, 1932 (Texas Exhibit C, pp. 39-41).

(3) Official State Highway Maps

In 1937 an official road map was issued by Louisiana which showed a mid-Sabine boundary in Sabine Lake. (Texas' Exhibit F, p. 9). The 1937 map shows a west bank boundary for the Sabine River. In 1970, an official state highway map was prepared by the Louisiana Department of Highways which also shows a mid-Sabine boundary in Sabine Lake and in Toledo Bend Reservoir (Texas' Exhibit F, p. 10). The only other official map, not already mentioned, which does not show a mid-Sabine boundary is Louisiana's Exhibit F, pp. 8 and 9. This is the official 1943 map of Louisiana. A western bank boundary is indicated for the Sabine.

(4) Louisiana Public Service Commission

1947. Texas' Exhibit C, pp. 121-22. This is the title and southwest portion of the 1947 map of the State of Louisiana issued for the Louisiana Public Service Commission, which shows the State boundary in the geographic center of Sabine Lake.

(5) *Louisiana Department of Conservation, Louisiana Geological Survey, Louisiana Department of Public Works*

(a.) 1950. Texas' Exhibit C, pp. 91-93. "The Corps of Engineers in Louisiana." This contains two maps which both show a geographic middle boundary in Sabine Lake.

(b.) 1955. Texas' Exhibit C, pp. 94-95. "Water Resources Development by Corps of Engineers in Louisiana." This shows a geographic middle boundary in Sabine Lake.

(c.) 1958. Texas' Exhibit F, p. 36(a). This is a geological map of Sabine Parish showing a mid-Sabine boundary.

(d.) The following Water Resources Bulletins or Pamphlets, listed in chronological order, support Texas' position:

(i) 1954. Texas' Exhibit C, pp. 61-62. Water Resources Pamphlet No. 1, "An Analysis of Contour Maps of Water Levels in Wells in Southwestern Louisiana 1952 and 1953." The map (p. 62) shows a mid-Sabine boundary.

(ii) 1958. Texas' Exhibit C, pp. 63-64. Water Resources Pamphlet No. 5. Map shows mid-Sabine boundary.

(iii) 1959. Texas' Exhibit C, pp. 65-66. Water Resources Pamphlet No. 6. Map shows middle of Sabine as boundary.

(iv) 1963. Texas' Exhibit C, pp. 67-68. Water Resources Pamphlet No. 12. Mid-Sabine boundary shown.

(v) 1965. Texas' Exhibit C, pp. 54-55. Water Resources Bulletin No. 6: "The western border of Vernon Parish is the Sabine River, which also is the Louisiana-Texas boundary." No map is given with this comment, but the Index and Summary to the Exhibit states: "This Bulletin also contains a map (which is not reproduced here) showing the boundary in the center of Sabine River."

(vi) 1965. Texas' Exhibit C, pp. 56-57. Water Resources Pamphlet No. 14. This pamphlet contains a map showing a geographic middle boundary in Sabine Lake.

(vii) 1965. Texas' Exhibit C, pp. 69-70. Water Resources Pamphlet No. 16. Map shows mid-Sabine boundary.

(viii) 1967. Texas' Exhibit C, pp. 58-60. Water Resources

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Bulletin No. 10. This has two maps showing the boundary in the middle of Sabine Lake.

(6) Louisiana Legislative Council

1964. Texas' Exhibit C, pp. 19-20. A "Research Study" entitled "The history and the Government of Louisiana," contains a map showing a geographic middle boundary in Sabine Lake.

NOTE: On pages 28 and 29 of Texas' Exhibit C, there is reproduced the title page and map from "Exhibit A" of an "Agreement Between the United States of America and the State of Louisiana." The map shows a geographic middle boundary in Sabine Lake. However, the title page contains this notation: "This plat is for the limited purpose of delineating zones 1, 2, 3 and 4." The agreement related to leasing zones in the Gulf of Mexico.

(7) Louisiana State Archivist

1968. Texas' Exhibit C, pp. 117-20. "The Rivers and Bayous of Louisiana," edited by Edwin Adams Davis, Louisiana State Archivist. "Where the Sabine River enters Louisiana at a point 32° N. latitude and 94° W. longitude, the middle of the river becomes the Louisiana-Texas boundary. After flowing on a southeasterly course for about 150 miles and then turning toward the southwest for another 150 miles or so, the river finally enters the Gulf of Mexico via Sabine Lake and Sabine Pass." This book also contains a map which shows the middle of Sabine Lake as the Texas-Louisiana boundary.

APPENDIX C

Leases

I. LEASES GIVEN BY TEXAS

The following leases executed by the State of Texas to various grantees support Texas' claim that it has asserted its boundary to the middle of the Sabine. The leases are divided into two categories and the leases in each category are listed chronologically. The categories are: (A.) sand, shell, and gravel permits issued by the Texas Game, Fish and Oyster Commission or its successors on Sabine River and Lake; (B.) oil and gas leases; (C.) pipeline easements.

(A.) *Sand, Shell, and Gravel Permits* (No Maps are included in most of the permits)

(1) 1930. Texas' Exhibit E, p. 157. This allows the grantee to remove sand, shell and gravel from Sabine Lake and River. No mention is made of a mid-Sabine boundary. However, it does show that Texas granted permits in the Sabine as early as 1930.

(2) 1932. Texas' Exhibit E, p. 156. Permit covers "Texas jurisdiction Sabine Lake and Sabine River."

(3) 1932. Texas' Exhibit E, p. 158. The permit is for "The west half of Sabine Lake, which belongs to the State of Texas."

(4) 1937. Texas' Exhibit E, p. 159. Permit covers "the bed of the Sabine and Neches Rivers and Sabine Lake."

(5) 1938. Texas' Exhibit E, p. 155. Permission is given "to operate in the Sabine Lake, near the mouth of the Sabine River."

(6) 1940. Texas' Exhibit E, p. 160. Permit allows removal "From the Beach Between Sabine Pass and Port Bolivar within the limits of the high and low tide of the Gulf of Mexico."

(7) 1948. Texas' Exhibit E, p. 161. Permission to remove "mudshell" "From the south half of the west half of Sabine Lake in Jefferson and Orange Counties."

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(8) 1950. Texas' Exhibit E, p. 166. Permit covers "the north half of Lake Sabine on the Texas side."

(9) 1951. Texas' Exhibit E, p. 170. "From an area from Port Arthur to the point where the Sabine River empties into Sabine Lake."

(10) 1951. Texas' Exhibit E, p. 171. Same area as Item (9).

(11) 1951. Texas' Exhibit E, p. 162. "The south half of the west half of Sabine Lake in Jefferson and Orange Counties, Texas." This is a renewal of the lease at Item (7), *supra*.

(12) 1951. Texas' Exhibit E, p. 167. "the north one-half (½) of Lake Sabine on the Texas side."

(13) 1952. Texas' Exhibit E, p. 163. "the south half of the west half of Sabine Lake in Jefferson and Orange Counties, Texas." This is a renewal of Item (11).

(14) 1952. Texas' Exhibit E, p. 172. "Sabine Lake within the boundaries and jurisdiction of the State of Texas."

(15) 1953. Texas' Exhibit E, p. 168. "the west one-half of Sabine Lake."

(16) 1953. Texas' Exhibit E, p. 164. "the west half of Sabine Lake in Jefferson and Orange Counties."

(17) 1953. Texas' Exhibit E, p. 169. "the west one-half of Sabine Lake." This is a renewal of Item (15).

(18) 1953. Texas' Exhibit E, p. 173. "the west one-half of Sabine Lake."

(19) 1954. Texas' Exhibit E, p. 165. "the west half of Sabine Lake in Jefferson and Orange Counties." This is a renewal of Item (16).

(20) 1955. Texas' Exhibit E, p. 176. "the Sabine River within the boundary of Newton County, Texas."

(21) 1955. Texas' Exhibit E, p. 174. "THE WEST ONE-HALF OF SABINE LAKE."

(22) 1956. Texas' Exhibit E, p. 177. "the Sabine River, fifteen (15) miles above Deweyville, Texas, to Big Island, in Newton and Orange Counties."

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(23) 1956. Texas' Exhibit E, p. 175. "the west one-half of Sabine Lake." This is a renewal of Item (21).

(24) 1956. Texas' Exhibit E, p. 178. "the Sabine River, one and one-half (1½) miles south of Highway Bridge U.S. #190 east of Bon Wier, Texas."

(25) 1958. Texas' Exhibit E, pp. 182-83. "the west one-half of Sabine Lake except area 'A' as shown on attached plat." The attached plat shows a mid-Sabine boundary.

(26) 1958. Texas' Exhibit E, pp. 184-85. "West One-Half Sabine Lake in Jefferson and Orange Counties, except the Area marked 'A' on the attached plat." The plat shows a mid-Sabine boundary.

(27) 1958. Texas' Exhibit E, pp. 186-87. "the west one-half of Sabine Lake, except Area 'A' as shown by the attached plat, in Jefferson and Orange Counties." The plat shows a mid-Sabine boundary but does not have an "Area 'A'".

(28) 1959. Texas' Exhibit E, pp. 188-89. "The west one-half of Sabine Lake; except Area 'A' as shown by the attached plat." The plat shows a mid-Sabine boundary.

(29) 1960. Texas' Exhibit E, pp. 179-81. "TEXAS SIDE OF SABINE LAKE: Areas shown in red on attached map." Map shows a mid-Sabine boundary.

(30) 1963. Texas' Exhibit E, pp. 190-91. "the Sabine River from the Naval Base at Orange, Texas to the Southern Pacific Railroad at Echo, Texas;" and "Sabine Lake, Jefferson County, Texas," with an exception unimportant to this case.

(31) 1966. Texas' Exhibit E, pp. 192-95. "Sabine Lake with the exception of Tract No. 1, S-594 . . ."

(32) 1966. Texas' Exhibit E, p. 196. "the Sabine River in Shelby County, Texas, adjoining Doyle English, East Hamilton Community." This permit is incorrectly described in Exhibit E's index as being for 1970.

(B.) Oil and Gas Leases Executed by Texas

Only one oil and gas lease executed by Texas is actually in evidence (Texas' Exhibit FF, dated December 11, 1958.

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The attached map shows a mid-Sabine boundary.). However, there is in evidence an affidavit from Jerry Sadler, Commissioner of the Texas General Land Office, which lists the various Texas leases from 1950 to 1969 (Texas' Exhibit B, pp. 50-56). Some of these are tracts which Texas offered to lease but no bids were received. The tax records on these various leases are found in Texas' Exhibit B, pp. 76-83.

On April 16, 1964, the Louisiana State Mineral Board protested Texas' advertising certain tracts in the west half of Sabine Lake for oil, gas, and mineral leases (Louisiana's Exhibit B, pp. 49-53). The Louisiana Attorney General registered a similar protest with the Texas General Land Office on January 31, 1966 (Louisiana's Exhibit B, pp. 54-56).

(C.) Pipeline Easements

In 1937, Interstate Water Company entered into a written contract with Logansport, Louisiana, to supply water to that city. Logansport is located on the Sabine River. The water wells used were located in Texas. Logansport agreed to extend its water mains to the center of Sabine River and the Interstate Water Company was to pipe the water from the Texas wells to the center of the Sabine and make connection with the Logansport mains. The Texas Attorney General's office issued an opinion on the legality of a pipeline easement in the western half of the Sabine (Texas' Exhibit C, pp. 102-03). The opinion states, in part:

"The River bed of the Sabine River is a part of the public free school land of this State, and because of such fact the Land Commissioner has authority, under Sec. 1, Art. 6020-A above, to grant permission to construct this pipeline across said river at any point where the Highway Commission has not assumed jurisdiction by the construction of a bridge across said river."

This opinion was referred to in a letter from the Louisiana State Director of the Federal Emergency Administration of Public Works written August 16, 1937 (Texas' Exhibit C, pp. 100-01).

On October 6, 1937, Texas granted the pipeline easement to the Interstate Water Company (Texas' Exhibit C, pp. 104-

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08). The easement provided a right-of-way "across the bed of the Sabine river at any point opposite and adjacent to the H. L. Brooks or J. Blankenship Surveys. files 3.189 & 3.333, respectively." The plat accompanying the lease shows the pipeline's position in the Sabine.

NOTE: Concerning all of these leases by Texas, an affidavit of Robert L. Cross, State Law Enforcement Coordinator for the Texas Parks and Wildlife Department, states (Texas' Exhibit B, pp. 58-59):

"The Texas Health Department in recent years has closed portions of the western one-half of Sabine Lake to oystering, because of pollution conditions. Louisiana has done likewise on the eastern half of the Lake.

"The Texas Parks and Wildlife Commission has for at least fifteen years granted permits to shell dredgers for the taking of shell from the bed of Sabine Lake on the western half thereof, and thousands of tons of shell have been dredged from the bed of the western half of the Lake under these permits, with compensation therefor being paid to the State of Texas. These, like all the activities of our agency on the western half of Sabine Lake, Sabine Pass and Sabine River, were conducted in full view of our counterpart officers of Louisiana whose boats patrolled their eastern half of the streams, and I never heard of any objection or assertion by them against our rights and jurisdiction over the waters and beds of the western half of the streams. On the contrary, as indicated above, they worked in complete cooperation and recognition of our rights and jurisdiction west of the center of the streams and confined their similar activities east of the center of the streams. This has been true not only during my personal knowledge of the facts since November 1958, but according to my predecessors and the records of this agency, such activities by Texas officials on the western half of these streams and complete acquiescence therein by Louisiana officials has existed since the predecessor of this agency, The Texas Game, Fish and Oyster Commission, was created in 1929."

II. LEASES GIVEN BY LOUISIANA

A. The following leases executed by the State of Louisiana generally support Texas' assertion that Louisiana acquiesced in a mid-stream boundary between the two States:

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(1) A mineral lease (No. 62) from the State of Louisiana as lessor to the Arkansas Natural Gas Co. as lessee, dated January 13, 1922, leasing "All the bed of Sabine Lake, east of the Louisiana-Texas boundary line, situated in Cameron Parish, Louisiana." There is no map attached to this lease. Texas' Exhibit D, pp. 1-4.

(2) A mineral lease (No. 272) from the State of Louisiana as lessor to C. A. King as lessee, dated April 19, 1933, leasing "The bed and bottom of Sabine River" The map attached to the lease shows that the lease only goes to the mid-stream of the Sabine. Texas' Exhibit D, pp. 79-81. However, see Louisiana's Exhibit E, pp. 7-9.

(3) A mineral lease (No. 369) from the State of Louisiana as lessor to the Gulf Refining Company, dated April 21, 1938, leasing "The South Eight Thousand Two Hundred and Eighty-Five (8,285.00) acres, more or less, in the East half of Sabine Lake, Cameron Parish, Louisiana, as per map and full description on file in the State Land Office." Texas' Exhibit D, pp. 5-9. The map enclosed with the lease clearly shows the Texas-Louisiana boundary in the geographic middle of the Sabine. In addition, the field notes accompanying the lease contain the following description:

"All of the following described land being a part of Sabine Lake in Cameron Parish, Louisiana. Beginning on the east shore of Sabine Lake, same being 3569.9 feet west of the common corner of fractional sections 21, 22 and 28 and section 27, T-14-S, R-15-W.

"Thence North approximately 25° 45' W to the center of Sabine Lake, same being the Texas-Louisiana boundary as set out in an act, approved, July 5, 1848, recorded in Volume IX., Page 245, United States Statutes at Large, giving the consent of the Government of the United States to the State of Texas to extend her eastern boundary, so as to include within her limits one-half of Sabine Pass, one-half of Sabine Lake, and one-half of Sabine River, as far north as the thirty-second degree of the north latitude;

"Thence with the center of Sabine Lake, same being the Texas-Louisiana boundary line in a southerly direction to the foot of said Lake, same being the mouth of Sabine Pass" Texas' Exhibit D, p. 7.

(4) A mineral lease (No. 370) from the State of Louisiana

as lessor to the Shell Petroleum Corporation as lessee, dated April 21, 1938, leasing "The center ten thousand acres, more or less, in the east half of Sabine Lake, Cameron Parish, Louisiana, as per map and full description on file in the State Land Office." This lease contains the same map found in the preceding lease to the Gulf Refining Company. The field notes here also make reference to the center of Sabine Lake as the Texas-Louisiana boundary line. Texas' Exhibit D, pp. 10-14.

(5) A mineral lease (No. 371) from the State of Louisiana as lessor to the Humble Oil & Refining Company as lessee, dated April 21, 1938, leasing "The north ten thousand acres, more or less, in the East half of Sabine Lake, Cameron Parish, Louisiana, as per map and full description on file in the State Land Office." The map attached to the lease is again the same as the one found with the Gulf Refining Company lease and the field notes also note the center of Sabine Lake as being the Texas-Louisiana boundary. Texas' Exhibit D, pp. 15-19.

(6) A mineral lease (No. 376) from the State of Louisiana as lessor to Mr. Tom C. Igoe as lessee, dated April 21, 1938, leasing "That part of the Sabine River owned by the State of Louisiana beginning at the boundary line between the State of Louisiana and the State of Texas" There is no map attached to this lease. Texas' Exhibit D, pp. 82-83. On January 24, 1939, Lessley P. Gardiner, Second Assistant Attorney General of Louisiana at that time, wrote a letter to Mr. O. M. Grisham concerning the lease to Mr. Igoe. The letter states:

"We reply to your letter of January 18, 1939, addressed to Hon. Gaston L. Porterie, Attorney General, wherein you advise that Mr. Tom C. Igoe has leased from the State for oil and gas development the following described property:

"[The same description as given above is then stated.]

"You desire to be advised first, whether or not Mr. Igoe has a lease on the land to the thread of Sabine River or the whole of the river bottom. Second, the number of acres included in the description.

"In replying to your first question, we have had reference to Act of Congress, April 6, 1812 (2 Stat. 701), ad-

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mitting Louisiana into the Union, fixing the Western boundary of the State as:

"Beginning at the mouth of the river Sabine; thence, by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude."

"The Eastern boundary of Texas was defined by Act of Congress of July 5, 1848 (9 Stat. 245) which states that:

"Congress consents that the Legislature of the State of Texas may extend her Eastern Boundary so as to include within their limits one-half of Sabine Pass, one-half of Sabine Lake, also one-half of the Sabine River, from its mouth as far North as the thirty-second degree of North latitude."

"We enclose photostatic copy of decision of the Assistant Secretary of the Interior, dated June 17, 1910, which goes into the question very thoroughly.

"We are unable to answer your second question, and I should imagine it would be necessary to have a survey made in order to determine the number of acres included in the description." Texas' Exhibit C, p. 23.

(7) A mineral lease (No. 453) from the State of Louisiana, as lessor, to the Shell Oil Company, as lessee, dated November 20, 1939, leasing "All lands except tax lands owned by the State and also all of the property now or formerly constituting the beds and other bottoms of rivers, creeks, streams, bayous, lakes lagoons, bays, coves, sounds, inlets and other water bodies, including all islands, and not under lease from the State of Louisiana on September 27, 1939, as are located within Sections 15, 17, 20, 21, 22, 27, 28, 29, 32, 33 and 34, Township 10 South, Range 13 West, Calcasieu Parish, Louisiana, the above described area being specifically shown within red lines on that certain map on file in the State Land Office, being 'Toomey Quadrangle', published by the Department of the Interior U.S. Geological Survey. . . ." The red line on the enclosed U.S. Geological Survey map goes only to the geographic middle of the Sabine River. Texas' Exhibit D, pp. 84-86.

(8) A mineral lease (No. 557) from the State of Louisiana, as lessor, to W.S. Smith, as lessee, dated April 19, 1943, leasing "The beds and bottoms of Sabine River, Sabine and Vernon Parishes, Louisiana, . . . all according to a plat of said

area on file in the State Land Office." The map accompanying the lease clearly shows that the lease only extends to the geographic middle of the Sabine River and includes the following comment: "Includes all of the Louisiana portion of Sabine River Bed in Sections 1, 2, 9, 10, 11 & 12 of T2N, R12W, and Sections 6 & 7 of T2N, R11W." Texas' Exhibit D, pp. 87-89.

(9) A mineral lease (No. 790) from the State of Louisiana, as lessor, to The Texas Company, as lessee, dated September 9, 1946, leasing "Tract 1068—Cameron Parish—All the beds and bottoms belonging to the State of Louisiana of rivers, creeks, streams, bayous, lagoons, lakes, bays, coves, sounds, inlets, ponds, and all other beds and bottoms of water bodies and of tributaries or distributaries of said water bodies together with all islands and together with all other lands belonging to the State of Louisiana . . . included within the following described area located in Township fourteen (14) South, Ranges fourteen (14) and fifteen (15) West, projected, Southwestern Land District of Louisiana, Cameron Parish, La., which said area is outlined in red on a map attached" On the attached map the leased area does not go beyond the geographic middle of Sabine Lake. Texas' Exhibit D, pp. 20-22.

(10) A mineral lease (No. 1717) from the State of Louisiana, as lessor, to The Ohio Oil Company, as lessee, dated June 3, 1949, leasing "TRACT 4390—Calcasieu and Cameron Parishes, Louisiana—All the beds and bottoms now or formerly constituting the beds and bottoms of the Sabine River belonging to the State of Louisiana lying between Latitude 30° 09' 12" North and Latitude 30° 00' 00" North and West of Longitude 93° 40' 00" West . . . as shown outlined in red on plat on file in the State Land Office." The map accompanying the lease does not draw a red line in the Sabine to indicate the western limits of the lease, but it does have a line drawn in the geographic middle of the Sabine to indicate the Texas-Louisiana boundary. Texas Exhibit D, pp. 126-30.

On March 13, 1952, the lessee, Ohio Oil Company, made a pooling request involving lease No. 1717. The request mentions at several points that the desired pooling unit was re-

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stricted to the "easterly half" of the Sabine River bed, up to the "Center Line of the Sabine River." In addition, the map attached to the request shows the line in the geographic middle of the Sabine (Texas' Exhibit N). On March 27, 1952, the Louisiana State Mineral Board approved Ohio Oil's pooling request, repeating the mid-Sabine language along with a map clearly showing the western boundary as the geographic middle of the Sabine. Texas' Exhibit O. A division order from the State Mineral Board relating to lease 1717 was signed on May 28, 1952, restricting the royalties from the leased property to the "East half of Sabine River." Texas' Exhibit P. *See also* Texas' Exhibit R. It may be noted here that an oil division order relating to a separate lease, No. 1716, dated June 20, 1952, between the Phillips Petroleum Company and the Louisiana State Mineral Board, also restricted royalties to the "Easterly Half of the Sabine River Bed." Texas' Exhibit Q.

(11) A mineral lease (No. 2384) from the State of Louisiana, as lessor, to W.W. Hawkins, as lessee, dated September 17, 1953, leasing "TRACT 5446—Cameron Parish, Louisiana—Sabine Lake Area—All of the lands now or formerly constituting the beds and bottoms of all water bodies including all islands and other lands formed by accretion or reliction, except tax lands, belonging to the State of Louisiana and not under lease on the date of this application" The plat attached to this lease shows that the lease lands do not go beyond the geographic middle of Sabine Lake. Texas' Exhibit D, pp. 23-27.

(12) A Unitization Agreement pertaining to Lease No. 2048 between the State of Louisiana and the Atlantic Refining Company, dated September 7, 1954, contains an attached plat, which was expressly made a part of the agreement, showing the geographic center of the Sabine River as the west line of the agreement. However, the agreement contains the following clause: "The execution of this pooling agreement by the State Mineral Board and its concurrence herein shall in no manner constitute an acknowledgment that the ownership of the State of Louisiana does not embrace the entire bed of the Sabine River extending to the right descending bank thereof, nor shall such execution and concurrence ever be

deemed or help to estop the State of Louisiana from claiming or asserting ownership of the entirety of said river bed nor shall same prejudice the rights of the State of Louisiana in any manner in claiming or asserting such ownership." Texas' Exhibit S.

(13) A mineral lease (No. 2762) from the State of Louisiana, as lessor, to The Texas Company, as lessee, dated July 23, 1955, leasing "TRACT 6090—Cameron Parish, Louisiana—All of the lands now or formerly constituting the beds and bottoms of all lakes, bays, coves, bayous, rivers and any other water bodies of every nature and description . . . owned by and not under mineral lease from the State of Louisiana on . . . the date of this application" Although it is not entirely clear, the attached plat seems to limit the lease to the eastern half of Sabine Lake. Texas' Exhibit D, pp. 28-32.

(14) A mineral lease (No. 2875) from the State of Louisiana, as lessor, to C. C. Steinberger, Jr., as lessee, dated December 15, 1955, leasing "Cameron Parish, Louisiana—All of the lands now or formerly constituting the beds and bottoms of all lakes, . . . rivers and other water bodies of every nature and description . . . owned by and not under mineral lease from the State of Louisiana on . . . the date of this application, situated in Cameron Parish, Louisiana, within the following described boundaries . . . all more fully shown outlined in red on a plat on file in the State Land Office. . . ." The plat accompanying the lease clearly shows that the leased area was only to the geographic middle of Sabine Lake. In addition, the map shows a geographic middle boundary line in Sabine Pass. Texas' Exhibit D, pp. 33-37.

(15) Mineral lease No. 2876 is a second lease to C.C. Steinberger, Jr., very similar to No. 2875, just mentioned. It also contains a map showing that the second lease only went to the geographic middle of Sabine Lake. Texas' Exhibit D, pp. 38-42.

(16) A mineral lease (No. 3459) from the State of Louisiana, as lessor, to the Shell Oil Company, as lessee, dated March 4, 1959, leasing "Cameron Parish, Louisiana—All of the lands now or formerly constituting the beds and bottoms of all lakes, . . . rivers and other water bodies of every nature and

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description . . . owned by and not under mineral lease from the State of Louisiana on . . . the date of this application, situated in Cameron Parish, Louisiana, within the following described boundaries . . . all more fully shown outlined in red on a plat on file in the State Land Office. . . ." The plat accompanying the lease again shows that the lease only pertains to the east half of Sabine Lake. Texas' Exhibit D, pp. 43-47.

(17) Lease No. 3460. This is another lease to Shell Oil Company, very similar to the one listed in Item (16). It also contains a map showing that the lease only goes to the geographic middle of Sabine Lake. This lease is also dated March 4, 1959. Texas' Exhibit D, pp. 48-52.

(18) Lease No. 3461. This is a lease very similar to the two previous ones to Shell Oil Company. This one is to The California Company and again contains a plat showing that the lease only affects the east half of Sabine Lake. Texas' Exhibit D, pp. 53-58.

(19) Lease No. 3462. This is another March 4, 1959 lease, this time to John W. Mecom, d/b/a/, Mecom Petroleum. The language of the lease is very similar to the previous three and also contains a map showing the limits of the lease to be in the eastern half of Sabine Lake. Texas' Exhibit D, pp. 59-63.

(20) Lease No. 3463. Another lease to The California Company in the same general area of Sabine Lake as the previous four leases. It is dated March 4, 1959, and again contains the map showing that this lease plus the previous four only go to the center of Sabine Lake. Texas' Exhibit D, pp. 64-68.

(21) Lease No. 3464. This is the last in this particular series of leases generally applying to the same area of Sabine Lake. This one is also dated March 4, 1959, and the Shell Oil Company is again the lessee. The same map used in the previous leases is also used here, showing that the leases do not extend beyond the eastern half of the lake. Texas' Exhibit D, pp. 69-73.

(22) A mineral lease (No. 3565) from the State of Louisiana, as lessor, to The California Company, as lessee, dated Sep-

tember 26, 1959, leasing "TRACT 7541—Cameron Parish, Louisiana" The accompanying plat shows that the leased area is only in the eastern half of Sabine Lake, and also shows a mid-stream boundary between the two states through Sabine Pass. Texas' Exhibit D, pp. 74-78.

(23) A mineral lease (No. 3561) from the State of Louisiana, as lessor, to The Atlantic Refining Company, as lessee, dated September 26, 1959, leasing "TRACT 7534—Beauregard Parish, Louisiana—All lands now or formerly constituting the beds and bottoms of all water bodies . . . belonging to and not under mineral lease from the State of Louisiana on . . . the date of this application . . . together with that portion of the bed and bottom of the Sabine River belonging to the State of Louisiana lying South of the North line of Section 5, [etc.], all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat shows the lease extending to the western bank of the Sabine River. Texas' Exhibit D, pp. 166-70. However, in a resolution of the Louisiana State Mineral Board dated June 15, 1961, effecting a unitization agreement involving this lease, the description of the leased area limits it to the center line of the Sabine River. The accompanying plat also clearly shows a mid-stream Sabine boundary between the two States. The agreement was "Approved as to form and legality" by the Assistant Attorney General of Louisiana. Texas' Exhibit T. A similar resolution concerning a separate portion of lease No. 3561 also contains the center-line restrictions on the Sabine, as well as the map showing a mid-stream boundary. Texas' Exhibit U. This latter resolution is especially clear in showing that the Louisiana Attorney General's office found "no objections" to the resolution.

(24) In a resolution of the Louisiana State Mineral Board dated July 23, 1962, involving a Louisiana mineral lease No. 2730 and a Texas mineral lease in the Sabine River, a pooling agreement was drafted between the various parties. The agreement contains the following clause:

"WHEREAS, all of the parties, except The Atlantic Refining Company, who are below designated as 'Lease Owners' are the present owners of the following described lease cov-

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ering land in the State of Texas in the Sabine River located between Westerly extensions of the North lines Fractional Section 22 and Section 34, Township 3 South, Range 12 West, Beauregard Parish, Louisiana . . ." (emphasis supplied). However, the agreement also contains the following:

"The parties hereto agree that the foregoing division and apportionment shall be and remain binding until, within the period of this agreement, any party may establish by definitive judgment of a court of competent jurisdiction, or in any other lawful manner, the exact limits of its claimed ownership, after which time, but not retroactively, the division and apportionment of interests within the unit shall be in proportion to the ownership, as so established, within the entire unit hereinabove described. If, at any time, any question or litigation should arise as to the ownership of any part of the property covered by any lease or leases herein concerned, neither this agreement nor anything herein contained, nor any of the data, maps, or exhibits considered in connection herewith, whether hereto attached or not, nor any course of conduct followed by any party hereto pursuant to this agreement shall ever be considered to be or permitted to serve as a basis of estoppel against any party hereto or prevent any party hereto from establishing its ownership, or having the boundaries or limits of its property determined, in ownership, or having the boundaries or limits of its property determined, in any lawful manner, anything herein contained to the contrary notwithstanding. However, the method of computing the royalty and other payments shall continue to be as specified above in sub-paragraphs (a) and (b)." Texas Exhibit V.

(25) A mineral lease (No. 4360) between the State of Louisiana, as lessor, to the Sohio Petroleum Company, dated August 31, 1964, leasing "TRACT 9176—Calcasieu Parish, Louisiana—All of the lands, islands and other lands formed by accretion or reliction . . . and all water bodies of every nature and description whether now or formerly existing, owned by and not under mineral lease from the State of Louisiana on July 3, 1964, situated in Calcasieu Parish, Louisiana, lying within the following described boundaries and more particularly described hereafter: Bounded . . . on the West by the boundary between the State of Louisiana and Texas . . ." The attached map clearly shows that the boundary is the geo-

graphic middle of the Sabine River. Texas' Exhibit D, pp. 90-94.

NOTE: It should be pointed out here that the State of Louisiana did make certain "protests" about Texas leasing part of the western Sabine during the 1960's. See, e.g., Louisiana's Exhibit B, pp. 49-52, 54-55, 57-66, 72-73.

(26) Louisiana Lease 4674, dated March 14, 1966. This lease only extended to the mid-stream boundary of the Sabine River, and the enclosed plat also showed a mid-stream boundary. However, the lease also contained the following clause: "the bed and bottom of the Sabine River included in the above described property, estimated to contain approximately 40 acres, shall not extend at any point to the West of the center of the Sabine River. By so limiting the westward extension of said water bed and bottom of the Sabine River, so far as any lease awarded is concerned, shall not be construed as affecting or in any manner prejudicing the claim of Louisiana to the West bank of the Sabine River as being its boundary with the State of Texas, all of the above described property being more fully shown outlined in red on a plat on file in the State Land Office." Texas' Exhibit D, pp. 95-99.

(27) On either January 14, 1969, or January 14, 1970 (it is not clear from the instrument), the Louisiana State Mineral Board passed a resolution involving state lease No. 376, which also contains a map showing that the unit is limited to the eastern half of the Sabine. However, the resolution also contains the following limitation: "This agreement shall in no manner constitute an acknowledgment that the ownership of the State of Louisiana does not embrace the entire bed of the Sabine River, extending to the right descending bank thereof, nor shall this agreement ever be deemed or held to estop the State of Louisiana from claiming and asserting ownership of the entirety of said riverbed, nor shall same prejudice the rights of the State of Louisiana in claiming and asserting such ownership." Texas' Exhibit M.

(28) Louisiana Lease No. 5202, dated December 16, 1968. This lease only extended to the mid-stream boundary of the Sabine River, and is specifically limited to points east of the

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center of Sabine River. However, there is the limiting clause found in Lease No. 4674, mentioned in item (26) above. In addition, the accompanying plat takes in all of the Sabine. Texas' Exhibit D, pp. 100-07.

(29) Louisiana Lease No. 5078, dated June 17, 1968. This is the same as Item (28), immediately preceding. Texas' Exhibit D, pp. 108-15.

(30) Louisiana Lease No. 5306, dated July 14, 1969. This lease is the same as Items (28) and (29) above. Texas' Exhibit D, pp. 116-23.

B. The following leases executed by the State of Louisiana generally do not support Texas' assertion that Louisiana acquiesced in a mid-Sabine boundary between the two States:

(1) An oyster shell lease dated March 13th, 1933, given by the State of Louisiana, as lessor, to the W. D. Haden Company of Galveston, Texas, leasing "Sabine Lake near Port Arthur, Sabine, and from Sabine Pass (Entrance to Sabine Lake) to the mouths of the Sabine and Neches Rivers. This is an exclusive lease for the above described property." There is no map with this lease. Louisiana's Exhibit D, p. 144. On March 13th, 1935, this same lease was extended for two more years (Louisiana's Exhibit D, p. 145), and on March 13th, 1937, for two more years. Louisiana's Exhibit D, p. 146.

(2) A mineral lease (No. 326) from the State of Louisiana, as lessor, to Wm. T. Burton, as lessee, dated October 22, 1935, leasing, in part, "All the bed and bottom of Sabine River lying south of the north line of section 16, T. 9 S., R. 13 W.; Calcasieu Parish" There is no map with this lease. Texas' Exhibit D, pp. 124-25; Louisiana's Exhibit E, pp. 9-10.

(3) An oyster shell lease (No. 223), from the State of Louisiana as lessor to Stevens Company, Inc. as lessee, dated July 6, 1947, leasing "Sabine Lake near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers. THIS IS AN EXCLUSIVE LEASE FOR THE ABOVE DESCRIBED PROPERTY." Louisiana's Exhibit D, p. 96.

NOTE: On August 7, 1946, the Texas General Land Office protested the Louisiana State Mineral Board's leasing certain

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tracts in Sabine Pass, claiming that title to all or a portion of the tracts belonged to Texas. The Louisiana Mineral Board noted the protest but still received bids on the tracts. Louisiana's Exhibit B, pp. 36-48.

(4) A mineral lease (No. 1834) from the State of Louisiana, as lessor, to Midstates Oil Corporation, dated July 12, 1950, leasing "TRACT 4563—Calcasieu Parish, Louisiana—All of the water bottoms, including all islands and other lands formed by accretion or reliction, belonging to the State of Louisiana, and not under lease on the date of this application, being situated in the following described area, to-wit: The bed and bottom of the Sabine River from a west projection of the North line of Section twenty-four (24), Township eight (8) South, Range fourteen (14) West, on the north to the bridge across the Sabine River on State Highway No. 7 on the south" The attached map shows that the lease extends to the western bank of the Sabine. However, the same map shows a mid-stream boundary between the two States. Texas' Exhibit D, pp. 131-35; Louisiana's Exhibit E, pp. 18-22.

(5) Mineral lease (No. 1842) from the State of Louisiana, as lessor, to Lincoln Frost, Jr., as lessee, also dated July 12, 1950. This lease is very similar to the previous one in that the coloring on the map takes in the entire Sabine River, while the map shows a mid-stream boundary between the two States. Texas' Exhibit D, pp. 136-40; Louisiana's Exhibit E, pp. 23-27.

(6) An oyster shell lease (No. 262) from the State of Louisiana (acting through the Louisiana Department of Wild Life and Fisheries) as lessor, to the W.T. Burton Company, Inc., dated November 30, 1950, leasing "the beds or water bottoms of SABINE LAKE near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers." There is no map attached. Louisiana's Exhibit D, pp. 5-12.

(7) An oyster shell lease (No. 275) again to W.T. Burton Company, Inc., this one dated March 6, 1952. The area leased is "the beds or water bottoms of SABINE LAKE near Port Arthur, Texas and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers." No map ac-

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companies this lease. Louisiana's Exhibit D., pp. 13-18. This is a renewal of Item (6).

(8) This is another oyster shell lease (No. 307) to W.T. Burton Company, dated September 14, 1954, leasing "the beds or water bottoms of Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, Louisiana." No map. Louisiana's Exhibit D, pp. 19-25.

(9) A mineral lease (No. 2730) from the State of Louisiana, as lessor, to The Atlantic Refining Company, as lessee, dated June 16, 1955, leasing "TRACT 6048—Beauregard Parish, Louisiana—All that part of the beds of Sabine River and other water bottoms belonging to the State of Louisiana . . . situated in Beauregard Parish, Louisiana . . . the entire area extending Westward to the boundary between the State of Louisiana and the State of Texas . . . all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat shows that the red line goes to the western bank of the Sabine. However, the plat also shows a mid-stream boundary between the two States, south of the area leased. Texas' Exhibit D, pp. 146-50.

(10) A mineral lease (No. 2731) from Louisiana, as lessor, to John Mecom, as lessee, again dated June 16, 1955, leasing "PORTION OF TRACT 6049; Said portion being more fully described as follows: That part of Tract No. 6049 which lies between the left descending bank of the Sabine River and the center line of the main channel of said Sabine River, containing 333.50 acres, more or less. Entire Tract 6049 described as follows: TRACT 6049—Cameron Parish, Louisiana—All lands, except tax lands, now or formerly constituting the beds and bottom of the Sabine River . . . situated in Cameron Parish, Louisiana, being more fully described as follows to-wit: . . . all more fully shown outlined in red on a plat on file in the State Land Office." Even though the first portion of this language would indicate that the lease only goes to "center line of the main channel of" the Sabine, the accompanying plat apparently goes to the west bank. Texas' Exhibit D, pp. 151-55.

(11) A mineral lease (No. 2732) from Louisiana, as lessor,

to the Houston, Sinclair and Stanolind Oil Companies, as lessees, dated June 16, 1955, leasing "TRACT 6050—Cameron Parish, Louisiana—All lands, except tax lands, now or formerly constituting the bed and bottom of the Sabine River . . . owned by and not under mineral lease from the State of Louisiana on the date of this application, situated in Cameron Parish, Louisiana, being more fully described as follows, to-wit: . . . continuing, on the same bearing, across the Sabine River, . . . all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat is the same as the lease discussed in Item (10), above. Texas' Exhibit D, pp. 156-60; Louisiana's Exhibit E, pp. 33-37.

(12) An oyster shell agreement (No. 314) between the State of Louisiana and the Lake Charles Dredging and Towing Company, Inc., dated February 25, 1955, in which the Lake Charles Company received the "right and privilege of taking and removing oyster shells from the beds or water bottoms of SABINE LAKE, Cameron Parish." There is no map with this lease. Louisiana's Exhibit D, pp. 48-53. It should be noted here that in a booklet entitled "The History and Regulation of the Shell Dredging Industry in Louisiana compiled by The Louisiana Wild Life And Fisheries Commission," (Louisiana's Exhibit I) several maps show the various oyster shell leases given by Louisiana since 1914. These maps follow page 15 of that booklet. On all the maps up to "Map 5—Location of Shell Leases 1959-1968," there are no leases shown in the Sabine and there is no division line indicating the state boundary. However, on Map 5, a distinct line is drawn in the middle of Sabine Lake.

(13) A mineral lease (No. 2874) to C.C. Steinberger, Jr., dated December 15, 1955, leasing part of Sabine Lake. It is Louisiana's contention that the accompanying plat extends beyond the middle of the Sabine. It certainly does not go to the west bank, but your Special Master is not sure it extends beyond the middle. Since the Texas side of the Sabine is not entirely given on the plat, it is very difficult to tell if the lease does go beyond the middle. Items (14) and (15) discussed in Part II(A), *supra*, supporting Texas' assertions, are similar leases to the one discussed here. For this particular lease, see Louisiana's Exhibit E, pp. 38-42. For the similar leases discussed in Part II(A), see Texas' Exhibit D, pp. 33-42.

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(14) An oyster shell agreement between Louisiana and the Lake Charles Dredging and Towing Co., Inc., dated February 25, 1956. This is a renewal of the agreement discussed in Item (12) above. Louisiana's Exhibit D, pp. 131-37. This agreement was again renewed on March 8, 1957 (Louisiana's Exhibit D, pp. 55-60) and March 29, 1958 (Louisiana's Exhibit D, pp. 138-43), and again on February 10, 1959 (Louisiana's Exhibit D, pp. 68-74). The Lake Charles Dredging and Towing Co., Inc., received an additional lease January 28, 1959, in which it was allowed to take and remove "oyster shells from the beds or water bottoms of SABINE PASS in the area between Mesquite Point and Lighthouse Bayou, Cameron Parish, State of Louisiana." Louisiana's Exhibit D, pp. 61-67.

(15) A clam shell and reef shell agreement between the State of Louisiana and the W.T. Burton Company, Inc., dated February 25, 1957, in which W.T. Burton received "the right and privilege of taking and removing clam shell and reef shell from the beds or water bottoms of Sabine Lake, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana." Louisiana's Exhibit D, pp. 117-23. This lease is a renewal of an earlier one covering the same territory (Louisiana's Exhibit D, pp. 110-16). These leases were also renewed on April 9, 1958 (Exhibit D, pp. 26-32), March 10th, 1959 (Exhibit D, pages 33-38), and June 21, 1960 (Exhibit D, pp. 124-29).

(16) A reef and/or clam shell agreement between Louisiana and the Guarisco Construction Co., Inc., dated July 16, 1957, leasing "the beds or water bottoms of SABINE LAKE, Parish of Cameron, State of Louisiana." Louisiana's Exhibit D, pp. 82-88.

(17) An oyster shell agreement between Louisiana and the Bauer-Smith Dredging Co., Inc., dated November 7, 1957, leasing the "beds or water bottoms of SABINE LAKE, Parish of Cameron, State of Louisiana." Louisiana's Exhibit D, pp. 97-102.

(18) An oyster and clam shell agreement between the State of Louisiana and Smith Brothers Dredging Co., dated February 10, 1958, leasing the "Louisiana side of Sabine Lake,

Parish of Cameron, State of Louisiana." Although Louisiana attempts to show that this supports its position, it seems to your Special Master that it actually supports Texas' position, since the lease recognizes that it is not leasing the entire lake, but rather only "Louisiana's side." Louisiana's Exhibit D, pp. 147-53.

(19) A shell lease between Louisiana, as lessor, and Louis J. Deshotel, as lessee, dated September 23, 1958, leasing "the beds or water bottoms of SABINE LAKE, Parish of Cameron, State of Louisiana." Louisiana's Exhibit D, pp. 75-81.

(20) A mineral lease (No. 3485) between the State of Louisiana and the Sun Oil Company, dated March 4, 1959, leasing "TRACT 7432—Sabine Parish, Louisiana,—All of the lands now or formerly constituting the bed and bottom of the Sabine River . . . owned by and not under mineral lease from the State of Louisiana on . . . the date of this application, situated in Sabine Parish, Louisiana, said bed and bottom being restricted to and confined within the lands situated within and belonging to the State of Louisiana, and being more particularly described as follows to-wit: All that part of the bed and bottom of the Sabine River, belonging to the State of Louisiana, lying South of the North line of Township 8 North, and North of the North line of Section 16, Township 8 North, Range 14 West, Sabine Parish, Louisiana, estimated to contain approximately 110 acres, all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat shows that the entire Sabine was covered under the lease, but the plat also has a distinct line showing the mid-stream as the boundary between the two States. Texas' Exhibit D, pp. 161-65; Louisiana's Exhibit E, pp. 43-47.

(21) An oyster and clam shell lease between Louisiana and S.A. Smith & Associates, dated June 27, 1960, leasing "the beds or water bottoms of SABINE LAKE, Cameron Parish, State of Louisiana." Louisiana's Exhibit D, pp. 103-09.

(22) A shell lease from Louisiana to the Louisiana Towing and Dredging Co., Inc., dated February 8, 1961, leasing "the beds or water bottoms of SABINE LAKE, Cameron Parish, State of Louisiana." Louisiana's Exhibit D, pp. 89-95.

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(23) A mineral lease (No. 3874) from Louisiana, as lessor, to the Sun Oil Company, as lessee, dated April 23, 1962, leasing "TRACT 8167—Calcasieu Parish, Louisiana—All of the lands now or formerly constituting the beds and bottoms of all water bodies of every nature and description and all islands . . . owned by and not under mineral lease from the State of Louisiana on February 27, 1962, situated in Calcasieu Parish, Louisiana, within the following boundaries: . . . all more fully shown outlined in red on a plat on file in the State Land Office." The accompanying plat clearly shows that the lease was intended to take in the entire Sabine, up to the west bank. Texas' Exhibit D, pp. 171-75; Louisiana's Exhibit E, pp. 75-79.

(24) A clam and reef shell agreement between Louisiana and the W.T. Burton Company, Inc., dated April 29, 1969, concerning "the beds or water bottoms of SABINE LAKE, near Port Arthur, Texas, and from Sabine Pass (entrance to Sabine Lake) to the mouth of the Sabine and Neches Rivers, Cameron Parish, State of Louisiana . . ." Louisiana's Exhibit D, pp. 40-47.

NOTE: As to the shell leases discussed in Items (1), (3), (6), (7), (8), (12), (14), (15), (16), (17), (18), (21), (22), and (24), in which they apparently cover the entire Sabine River, Texas attempts to show in its Exhibit G, pp. 168-84, that while Louisiana used descriptions of State boundary streams which, on the face of the leases, cover the entire streams between certain points, it is left up to the individual lessee to keep his operations within the Louisiana boundary lines. Your Special Master does not believe the various documents filed in the last portion of Texas' Exhibit G necessarily show this, but the affidavit of Robert L. Cross, Law Enforcement Coordinator of the Texas Parks and Wildlife Department (Texas Exhibit B, pp. 58-59) tends to support it:

"The Texas Parks and Wildlife Commission has for at least fifteen years granted permits to shell dredgers for the taking of shell from the bed of Sabine Lake on the western half thereof, and thousands of tons of shell have been dredged from the bed of the western half of the Lake under these permits, with compensation therefor being paid to the State of Texas. These, like all the activities of our agency on the western half of Sabine Lake,

Sabine Pass and Sabine River, were conducted in full view of our counterpart officers of Louisiana whose boats patrolled their eastern half of the streams, and I never heard of any objection or assertion by them against our rights and jurisdiction over the waters and beds of the western half of the streams. On the contrary, as indicated above, they worked in complete cooperation and recognition of our rights and jurisdiction west of the center of the streams and confined their similar activities east of the center of the streams. This has been true not only during my personal knowledge of the facts since November 1958, but according to my predecessors and the records of this agency, such activities by Texas officials on the western half of these streams and complete acquiescence therein by Louisiana officials has existed since the predecessor of this agency, The Texas Game, Fish and Oyster Commission, was created in 1929."

III. PIPELINE EASEMENTS AND RIGHTS-OF-WAY BY LOUISIANA

A. Texas' Exhibit G, pp. 74-114, contains 9 pipeline easements given by the State of Louisiana from 1950 to 1966, which only go to the middle of the Sabine.

(1) 1950. Texas' Exhibit G, pp. 74-76. This is an easement in Sabine Lake by Louisiana to the United Gas Pipe Line Co. The description of the lease does not limit the easement, but the accompanying map clearly shows the Texas-Louisiana boundary in the middle of Sabine Lake. The easements are all signed by the Louisiana governor.

(2) 1952. Texas' Exhibit G, pp. 77-79. The plat with this lease states: "West ½ of River property of the State of Texas." However, the lease contains the following limitation: "This grant by the State of Louisiana shall in no manner constitute an acknowledgement that the ownership of the State of Louisiana does not embrace the entire bed of the Sabine River, extending to the right descending bank thereof, nor shall this grant ever be deemed or held to estop the State of Louisiana from claiming and asserting ownership of the entirety of said river bed, nor shall same prejudice the rights of the State of Louisiana in claiming and asserting such ownership."

(3) 1961. Texas' Exhibit G, pp. 80-85. The easement itself only states that it covers "The Sabine River in Section 33,

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Township 3 South, Range 12 West located approximately 3.25 miles West of Merryville." However, accompanying the easement is a sketch of the Sabine River showing a geographic middle boundary.

(4) 1962. Texas' Exhibit G, pp. 86-94. The provisions of the easement make reference to four maps accompanying the easement, all four of which clearly show a geographic middle boundary in the Sabine. A companion lease, dated the same day, is found in Louisiana's Exhibit E, pp. 84-89.

(5) 1964. Texas' Exhibit G, pp. 95-97. It is not entirely clear, but the map accompanying this easement appears to limit the grant to the eastern half of the Sabine. The language of the grant states: "1 - 20 inch pipeline crossing Sabine River a distance of 14 rods located in Section 6, Township 2 North, Range 11 West."

(6) 1964. Texas' Exhibit G, pp. 98-100. The easement language states: "2-24" diameter pipelines crossing Sabine River a distance of 5 rods each located in Section 9, Township 9 South, Range 13 West." The accompanying plat has a small map of the Sabine River showing a mid-Sabine boundary.

(7) 1965. Texas' Exhibit G, pp. 101-03. While this easement goes only to the geographic middle of the Sabine, it also contains this clear limitation: "It is understood and agreed that, while the State of Louisiana asserts that its boundary with the State of Texas extends to the west bank of the Sabine River and Sabine Pass, the rights granted herein by the State of Louisiana shall not extend westward and beyond the thread or main channel of the Sabine River. It is also understood that the limitation thus placed on the within grant, shall not be construed as abandoning Louisiana's boundary claim which extends to the west bank of the Sabine River."

(8) 1965. Texas' Exhibit G, pp. 104-09. This contains the same limiting language as the previous easement.

(9) 1966. Texas' Exhibit G, pp. 110-14. The easement grants "A right-of-way on, under and across the Sabine River in Township 12 South, Range 14 West, Cameron Parish, Louisiana, the centerline being more particularly described as fol-

lows, to-wit: BEGINNING at a point in the East Bank of the Sabine River having coordinate values of approximately S=1,239,300 and Y=503,050; THENCE North 88°29'20" West 461.5 feet to the center of the Sabine River." The accompanying maps clearly show a mid-Sabine boundary line. However, a companion lease given by Louisiana to the western half of the Sabine at this location is found in Louisiana's Exhibit E, pp. 93-97. Thus, taken together, the two leases grant the entire Sabine to the lessee.

It appears to your Special Master that only five of the nine easements support Texas' position, that is, the ones for 1950, 1961, 1962, and the two for 1964. The others either have limitations which make them useless to show acquiescence or do not mean what Texas says they mean.

B. Louisiana has placed in evidence certain pipeline easements or rights-of-way (Louisiana's Exhibit E, pp. 81-107). However, these easements are not nearly as clear as Louisiana claims. Although some of them lease "the bed of the Sabine River," and the others simply list "Sabine River," all except two have accompanying maps showing a mid-Sabine boundary between the two States. Two of the easements (Items 4 and 6, below) clearly leased the western half of the Sabine.

(1) 1962. Louisiana's Exhibit E, pp. 81-83. This easement leases "Sabine River" in Cameron Parish. However, the accompanying map clearly shows a mid-Sabine boundary between the two States.

(2) 1962. Louisiana's Exhibit E, pp. 84-89. This is a companion lease to the one discussed under Item (4) above. It leases "The Bed of the Sabine River," in Calcasieu Parish, Louisiana. The various notes on the accompanying map indicate that the lease might be for the entire Sabine bed, but the map shows a mid-Sabine boundary line.

(3) 1964. Louisiana's Exhibit E, pp. 90-92. This leases the "Underwater area contained in the river bed of Sabine River at the point where our pipelines cross said river, being located in fractional Section 22, Township 12 North, Range 13 West, Sabine Parish, Louisiana." The accompanying map

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shows a mid-Sabine boundary. However, on all of these your Special Master is unable to tell if the State is leasing only the eastern half or all of the Sabine. The language would indicate all the Sabine, but the maps show a mid-Sabine boundary between the two States.

(4) 1966. Louisiana's Exhibit E, pp. 93-97. This leases the western half of the Sabine, and the map shows the same. This lease is a companion to the lease described in Item (9) of Part (A) above, which leased the eastern half of the Sabine at approximately the same point. However, the map used still shows a mid-Sabine boundary between the two States.

(5) 1966. Louisiana's Exhibit E, pp. 98-100. This leases "Across the Sabine River, in Lot 4, Section 6, Township 2 North, Range 11 West, Vernon Parish, Louisiana." The accompanying map cannot be said to show a boundary in either the mid-Sabine or the west bank.

(6) 1966. Louisiana's Exhibit E, pp. 101-03. This leases "The West-half (W/2) of the Sabine River located in Section 33, Township 10 South, Range 13 West." With the following limitation: "It is understood that insofar and only insofar as this tract is concerned the grant herein is executed without warranty of title, even as to no return of consideration paid and futher [sic], that the area covered by this grant is limited to the waters and submerged lands being thereunder which lie within the boundary of the State of Louisiana." However, the accompanying map shows a mid-Sabine boundary between Texas and Louisiana.

(7) 1968. Louisiana's Exhibit E, pp. 104-07. This allows laying "a dual 10.750: O.D. pipeline crossing the Sabine River approximately 100' north of the Southern Pacific Railroad bridge, four miles north of Orange, Texas. The crossings approach the east bank in Section 32, T10S, R13W, of Calcasieu Parish, Louisiana, as more fully shown on the attached Corps of Engineers Application Plat and a drawing showing an enlarged view of the east bank." The accompanying map does not show either a mid-Sabine or west bank boundary.

It seems to your Special Master that only two of the leases (Items 4 and 6) clearly show Louisiana leasing the western

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half of the Sabine, and even these two contain maps which portray the boundary as the middle of the Sabine. Of the remaining five, three have maps which also show a mid-Sabine boundary. It is not clear to your Special Master from the remaining two (Items 5 and 7) what portion of the Sabine was leased.

APPENDIX D

Federal Recognition of a Mid-Sabine Boundary between Texas and Louisiana

The following is a list of acts by federal agencies or the United States Congress which have not already been listed under such headings as maps, leases, etc.

(A.) 1852-1969. Texas' Exhibit B, pp. 35-38, contains a list of the appropriations or authorizations in River and Harbor Acts passed by the United States Congress from 1852 to 1913, which relate to Sabine River improvements and specifically mention Texas as the State within which all or a portion of such projects are located. Sixty-one such appropriations or authorizations are listed. A similar list containing forty appropriations or authorizations by Congress from 1914 to 1969 is given in Texas' Exhibit E, pp. 19-23.

(B.) 1903. Texas' Exhibit B, p. 43. On June 25, 1903, the Acting Commissioner of the United States General Land Office wrote a letter to a Texas resident in response to a request for a sketch of the Sabine River boundary between Texas and Louisiana. The letter states:

"In reply I have to state that this office has no map of that portion of the Texas boundary, nor any data showing the exact position of the boundary in the river.

"When Texas was annexed to the Union the boundary followed the *western bank* of Sabine River to the point where the parallel of 32° north latitude intersects the same, but by the act of July 5, 1848 . . . , Congress consented to an extension of the eastern boundary of Texas so as to include one-half of Sabine Pass, one-half of Sabine Lake, and one-half of Sabine River, from its mouth as far north as the thirty second degree of north latitude." (emphasis in original)

(C.) 1906-1951. *Acts of the U.S. Congress.*

(1.) 1906. Texas' Exhibit E, pp. 1-2. On January 25, 1906, Congress authorized the Jasper and Eastern Railway Company to construct a bridge "over and across the Sabine River, in the States of Texas and Louisiana, at any point where said river divides Newton County, in the State of Texas, and Calcasieu Parish, in the State of Louisiana"

(2.) 1906. Texas' Exhibit E, pp. 3-4. On June 19, 1906, Congress created a new customs collection district in Texas, "beginning on the Gulf of Mexico at the center of the stream of Sabine Pass; thence north with the center of the stream of Sabine Pass to Sabine Lake; thence with the center of the stream of Sabine Lake to a point directly opposite to the Sabine River; thence north with the east shores of the Sabine River to the north boundary line of Shelby County, Texas"

(3.) 1912. Texas' Exhibit E, p. 5. On April 27, 1912, Congress authorized a Texas corporation, the Port Arthur Pleasure Pier Company, to build a bridge across the Sabine-Neches Canal, "in front of the town of Port Arthur, in the county of Jefferson, in the State of Texas"

(4.) 1928. Texas' Exhibit E, pp. 6-8. On May 18, 1928, Congress authorized H.L. McKee to build a bridge "across Lake Sabine . . . between a point at or near Port Arthur, Texas, and a point opposite in Cameron Parish, Louisiana" After completion of the bridge, either Texas or Louisiana, "within or adjoining which any part of such bridge is located," could purchase the structure. See also Appendix B, Part III(C) (2), "The McKee Survey."

Also on May 18, 1928, Congress authorized Texas and Louisiana to construct a bridge across the Sabine River at Pendleton's Ferry. Texas' Exhibit E, p. 8.

(5.) 1934. Texas' Exhibit E, pp. 9-13. On June 18, 1934, Congress authorized the City of Port Arthur, Texas, to construct a bridge "across Lake Sabine, at a point suitable to the interests of navigation, between a point at or near Port Arthur, Texas, and a point opposite in Cameron Parish, Louisiana" A special "Port Arthur Bridge Commission" was created and, after payment of the Commission's obligations, it was authorized to deliver deeds to the State of Texas for "that part [of the bridge] within the State of Texas" and to the State of Louisiana for "that part within the State of Louisiana."

(6.) 1951. Texas' Exhibit E, pp. 14-18. On October 30, 1951, Congress authorized the Sabine Lake Bridge and Causeway Authority to construct and operate bridges over Sabine Lake. Section 3 of the act created the Authority with seven members to be appointed—four from Jefferson County, Texas, and

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three from Cameron Parish, Louisiana. Section 8 authorized the Authority to convey that portion of the bridges located in the State of Texas to Texas or Jefferson County, Texas, and that part located in the State of Louisiana to Louisiana or Cameron Parish, Louisiana.

(D.) 1932. Texas' Exhibit B, pp. 46-49. On March 1, 1932, the Acting Assistant Commissioner of the U.S. General Land Office wrote a letter to a Louisiana title company in response to questions about the water boundary between Texas and Louisiana. After outlining the history of the Sabine boundary between the two States, the Commissioner made reference to an earlier controversy over islands in Sabine River where it was held that for purposes of the island question, "the west bank of the western channel of the river at this point will be recognized as the boundary between the States of Louisiana and Texas." The Commissioner then stated: "This would appear to fix the boundary line through Sabine Lake, no differentiation between the river and the lake having appeared in any of the treaties or acts of Congress, *supra*."

(E.) 1969. Texas' Exhibit E, pp. 24-26. There is in evidence the cover and two maps from a U.S. Geological Survey booklet entitled "Ground-Water Data for Orange County and Vicinity, Texas and Louisiana, 1969." Both maps show a mid-Sabine boundary between Texas and Louisiana.

APPENDIX E

Other Acts of Prescription by the State of Texas or Acquiescence by the State of Louisiana

It is conceded by both parties that navigability on the Sabine River is, and always has been, open to both States. See Stipulation of facts found in the Special Master's pretrial order of September 9, 1970. Section 12 of an Act of Congress dated February 15, 1811 (Texas' Exhibit G, pp. 47-50) provides: "[A]ll navigable rivers and waters in the Territories of Orleans and Louisiana, shall be, and forever remain, public highways." The Congressional Act admitting Louisiana to the Union (Texas' Exhibit C, p. 2) provided: "[I]t shall be taken as a condition upon which the said state is incorporated in the Union, that . . . the navigable rivers and waters leading . . . into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States" In addition, the Treaty of 1819 between the United States and Spain (Louisiana's Exhibit A, p. 73) states: "[T]he use of the waters, and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary, on their respective banks, shall be common to the respective inhabitants of both nations." The boundary limits of this Treaty were reestablished in the Treaty of 1828 between the United States and the United Mexican States (Louisiana's Exhibit A, pp. 94-96) and the Treaty of 1838 between the United States and the Republic of Texas (Louisiana's Exhibit A, p. 97).

Louisiana argues that this reservation of navigation rights makes any acts relating to navigation immaterial for our purposes here (Supplemental Trial Memorandum, pp. 13-15). Of course, the question is what acts "relate" to navigation. The following miscellaneous acts are believed by your Special Master, when they are considered together, to show assertion by Texas or acquiescence by Louisiana in a mid-Sabine boundary.

(A.) BRIDGES

An affidavit (Texas' Exhibit B, pp. 99-101) of J. C. Dingwall, Texas State Highway Department Engineer, states:

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"My name is J. C. Dingwall, and I am State Highway Engineer for the State of Texas, having been with the State Highway Department for 38 years. I have personal knowledge of the facts and records of this Department relating to construction of bridges by the State of Texas and the State of Louisiana across the Sabine River. All of the bridges on the State Highway System across the Sabine River between Logansport, Louisiana (near the 32nd degree of north latitude), and the Gulf of Mexico were constructed with the State of Texas and the State of Louisiana each paying fifty percent (50%) of cost, except for Federal contributions, and except for the present crossing of Toledo Bend Reservoir on Texas State Highway 21 (Louisiana State Highway 6), which was paid for by the Sabine River Authorities of Texas and Louisiana as a replacement crossing necessitated by the reservoir construction."

See also the testimony of John B. Carter, former Chief Location and Design Engineer for the Louisiana Department of Highways, at the New Orleans hearing. Transcript, pp. 44-67, 85-89.

(1) 1897. According to an affidavit (Texas' Exhibit E, p. 94) from Farland Bundy, Bridge Field Engineer for the Texas Highway Department, which in turn was based on the historical records and files of the Texas Highway Department, the first bridge across Sabine River was built in 1897 at Logansport, Louisiana. This bridge was built by local interests but was later purchased and operated jointly by Shelby County, Texas, and DeSoto Parish, Louisiana. A new bridge was constructed at this site in 1935. See Item (4) *infra*.

(2) 1926-1927. On December 18, 1924, the governors of Texas and Louisiana signed an agreement to construct a bridge at Orange, Texas (see Texas' Exhibit E, p. 98 and New Orleans hearing transcript, pp. 53-54). First work on the bridge was begun in May, 1926, with the formal opening and dedication taking place on November 11, 1927. The bridge was dedicated to the soldiers of Texas and Louisiana who fought in World War I. According to the November 11, 1927 edition of the *Orange Leader* (Texas' Exhibit E, p. 99), Ruffin G. Pleasant, former governor of Louisiana and a personal representative of the Louisiana government, made the following remarks in his dedication speech: "This beautiful bridge, reaching across the

Sabine river, and half in Louisiana and half in Texas, is a symbolical handclasp of eternal friendship."

In his affidavit (Texas' Exhibit E, p. 95), Farland Bundy claims that the plans for the bridge were drawn up by the Texas State Highway Department and approved by the Louisiana State Highway Department, with each State sharing the cost. Two pages of the plans are found in Texas' Exhibit F, pp. 59-60. Both pages show the Texas-Louisiana boundary in the center of the Sabine.

(3) *December 15, 1928.* Texas' Exhibit E, p. 110. This bridge was built across the Sabine between Bon Wier, Texas, and Merryville, Louisiana. Texas and Louisiana were "joint owners" of the bridge. A maintenance agreement for the bridge was signed by Texas and Louisiana on May 20, 1957 (Texas' Exhibit E, pp. 128-31). Under the agreement, Texas was to pay the cost of maintenance of the bridge "from Station 30+51 to the west end of the bridge," and Louisiana was to pay the maintenance cost "from Station 30+51 to the east end of the bridge, including the channel pier at Station 30+51." Plans for the bridge are in Texas' Exhibit F, pp. 50-53. Because the plans are faded, it is difficult to determine the exact location on the bridge of "Station 30+51." Since Texas and Louisiana were "joint owners" of the bridge and the plan on page 51 shows a mid-Sabine boundary, it is fair to assume that it was at or near the middle.

(4) *August 9, 1935.* Texas' Exhibit E, pp. 112-13. In 1935, both Texas and Louisiana agreed to build a bridge at Logansport, Louisiana, to be constructed as a "joint highway bridge project." The project was handled by the Texas State Highway Commission, but all documents were to be approved by the Louisiana State authorities. All construction and maintenance costs of the bridge were shared equally by Texas and Louisiana, with part of the cost being paid by the federal government. Some of the plans for this bridge are found in Texas' Exhibit F, pp. 38-40. A mid-Sabine boundary is shown on pages 38 and 39.

(5) *October 21, 1935.* Texas' Exhibit E, pp. 132-33. This agreement provides for the construction of a bridge over the Sabine River between Starks, Louisiana, and Vidor, Texas. It

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was a "joint highway bridge," constructed with federal and State funds. All construction and maintenance costs were to be "borne equally by the two States."

(6) *November 4, 1935.* Texas' Exhibit E, pp. 141-42. This bridge was constructed across the Sabine between Milam, Texas, and Many, Louisiana. The bridge was known as the Pendleton Ferry Bridge. Except for the federal funds used on the project, all construction and maintenance costs of the bridge were shared equally between Texas and Louisiana. Plans for the bridge are found in Texas' Exhibit F, pp. 54-58. Page 57 shows a mid-Sabine boundary.

Texas' Exhibit F, pp. 41-43, also contains plans which may pertain to this bridge. The federal highway project number on the plans (862) does not correspond to that given in the contract (822), but the site and date given on the plans correspond to the contract. The plans show a mid-Sabine boundary between the two States.

(7) *May 4, 1936.* Texas' Exhibit E, pp. 126-27. This Sabine River bridge, between Burr's Ferry, Louisiana, and Burkeville, Texas, was constructed by Texas and Louisiana as a "joint highway bridge project." Other than federal aid, the cost of building and maintaining the bridge was divided equally between the two States. A portion of the plans for this bridge are found in Texas' Exhibit F, pp. 47-49.

Under the maintenance agreement for this bridge, signed May 20, 1957, Texas and Louisiana each pay one-half of the cost of maintaining the bridge. Louisiana's Exhibit N.

(8) *March 4, 1949.* Texas' Exhibit E, pp. 134-40. This is an agreement between Texas and Louisiana to construct a new bridge on U.S. Highway No. 90 between Orange, Texas, and Lake Charles, Louisiana. Each State was to pay one-half of the cost of constructing the bridge and one-half of the maintenance expense. Plans for the bridge are found in Texas' Exhibit F, pp. 61-63. Page 61 clearly shows a mid-Sabine boundary between Texas and Louisiana. On April 9, 1954, the U.S. Army Corps of Engineers gave permission to the Texas Highway Department to remove the old bridge at Orange, pursuant to the March 4, 1949 contract between Texas and Louisiana. The permit is found in Texas' Exhibit E, pp. 143-44. The

attached maps show a mid-Sabine boundary line. Texas' Exhibit E, pp. 147-49.

(9) September 22, 1961. Texas' Exhibit B, pp. 72-75. Under this contract signed in 1961, a causeway and drawbridge was jointly constructed by Jefferson County, Texas, and Cameron Parish, Louisiana, across Sabine Pass. The bridge was to be located at the south tip of Pleasure Island. Each party was to bear fifty percent of the construction cost. A toll was to be charged for using the bridge and, after deducting necessary expenses, the toll proceeds were to be divided equally between Jefferson County and Cameron Parish. A photograph of the bridge and causeway is found in Texas' Exhibit E, p. 109.

Cameron Parish had originally been authorized to erect the bridge by an act of the Louisiana Legislature in 1955 (Texas' Exhibit C, pp. 125-26). The Louisiana portion of the bridge was to be "constructed from a point in Cameron Parish to a point where such bridge will meet a bridge constructed or to be constructed from the Jefferson County, Texas, side of such stream toward the Cameron Parish side." A 1956 act amended the original 1955 legislation but the quoted language was retained. Texas' Exhibit C, pp. 127-28.

(10) October 3, 1962. Interstate Highway 10 crosses the Sabine River at Orange, Texas. In 1962, Texas and Louisiana signed an agreement to erect signs showing the Texas-Louisiana boundary on the U.S. 10 bridge (Texas' Exhibit E, pp. 101-07). The contract provides: "The joint project shall include the following: (a) Construction of Louisiana State Line and Texas State Line Signs at the center of the bridge." Photographs of the bridge and the State line signs are found in Texas' Exhibit E, p. 100. Plans for the signs are found in Texas' Exhibit F, pp. 64-65.

(11) November 29, 1965. Texas' Exhibit E, pp. 116-25. This agreement was for the construction of a bridge across the Toledo Bend Reservoir. Because of the limitation placed in the Sabine River Compact (Louisiana's Exhibit A, pp. 351-54), your Special Master does not believe this 1965 agreement can be used to show Louisiana's acquiescence in a mid-Sabine boundary. See the discussion on this point in Appendix B (Maps), Part I, Item (14) and the discussion at the New Orleans hearing (Transcript, pp. 38-40).

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NOTE: Louisiana's Exhibit B, pp. 29-31, contains an affidavit from A. D. Jackson, Assistant Director of the Louisiana Department of Highways, which states in part:

"The policy of the Department of Highways and that of the State of Texas, as far as Affiant knows, was to try to work out mutually satisfactory bridges across the Sabine River, Sabine Lake and Sabine Pass for the mutual benefit of the inhabitants of both States and the public generally.

"Affiant is familiar with the fact of the location of signs on some of the bridges across the Sabine River and Sabine Pass, and states that as far as the Department of Highways was concerned these signs were never placed on the bridges with any intent to locate the legal boundary between the State of Texas and the State of Louisiana." In response to this argument, see the discussion on "intent" found in Appendix B (Maps), Part II.

(B.) ASSESSMENT OF TAXES

In *Vermont v. New Hampshire*, 289 U.S. 593 (1933), involving a dispute over the boundary line between those two States, the United States Supreme Court gave substantial weight to the question of whether either State had taxed the land in controversy. As the Court stated:

"Of persuasive force is the fact found by the Special Master that New Hampshire appears never to have asserted definitely any right to tax land or structures located on the west side of the river before 1909 or 1912. From 1909 to 1927, New Hampshire taxed structures on the west side of the river belonging to the Connecticut River Power Company at Vernon, the property of which appears also to have been taxed by Vermont from 1916 to 1927. . . . In 1912 the New Hampshire taxing authorities taxed seven corporations, three partnerships and persons unknown having structures located on the Vermont bank of the river near Bellows Falls, at a valuation in excess of \$1,000,000. The same property appears to have been taxed by Vermont, the record of taxation of some of it belonging to the Bellows Falls Canal Company, going back to a date as early as 1820. . . . The Special Master's finding that it was this 'unprecedented' taxation by New Hampshire which precipitated the present suit is unchallenged. The fact that in the period of over a century following Vermont's admission to

statehood this is the first well authenticated instance of an effort on the part of the New Hampshire authorities to tax property located on the west bank of the river is of substantial weight in indicating acquiescence by New Hampshire in the boundary line restricting her jurisdiction to the river at the low-water mark." 289 U.S. at 615-16. See also *Michigan v. Wisconsin*, 270 U.S. 295, 306, 317 (1926).

There is no evidence of Louisiana's taxing facilities such as pipeline easements, railroad lines, etc., on the western half of the Sabine River. Indeed, Louisiana admits that it has not taxed beyond the middle of the Sabine River. Louisiana's Exhibit T. On the other hand, there are several items supporting the conclusion that Texas made tax assessments, either on the State or local level, of land or property extending to a mid-Sabine boundary.

1. State Assessment

The tax rate structure imposed by Texas on railroad companies, oil pipelines, and other facilities is outlined in an affidavit by Earl Rosell, Intangibles Tax Assessor and Assistant Director of the Ad Valorem Tax Division of the Texas State Comptroller's Office (Texas Exhibit E, pp. 27-28). The affidavit states:

"With reference to the Sabine River boundary between Texas and Louisiana, it would appear that the State of Texas assesses its intangibles tax to the geographic middle of the Sabine River on railroads and oil pipelines which cross the River, as the distances for assessment and apportionment purposes are reported by the transportation companies concerned as being measured to such boundary line. The Intangible Tax has been levied on railroads since the Intangible Tax Law was enacted in 1905, and the railroads then, and now, in existence, which cross the Sabine River and to which this tax assessment has been applied since 1905 are now known as the Kansas City Southern Railway Company and the Missouri Pacific Railroad Company, which use the same railroad bridge at Orange, Texas, the Southern Pacific Transportation Company, which has bridges across the Sabine at Orange and Logansport and the Atchison, Topeka and Santa Fe Railway Company, which crosses in Newton County, Texas.

"There are fifteen (15) crude oil pipelines which operate in the Texas Counties along the Sabine River and many

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of these cross the Sabine at various places between Logansport, Louisiana, and the mouth of the River.

"The State has been assessing and collecting the intangibles tax on crude oil pipelines since they were made subject to the law in 1933.

"The above tax is in addition to the ad valorem taxes assessed and collected by the counties on behalf of the State and the counties on the real and personal properties of said railroad and crude oil pipeline companies."

Kansas City Southern Railway Company. An affidavit from Geo. H. McCright (Texas' Exhibit E, pp. 29-33), former General Tax Commissioner for the Kansas City Southern Railway Company, states:

"The Kansas City Southern Railway Company has a railroad bridge across the Sabine River on which I render and Texas assesses and collects taxes to the approximate geographic middle of the River. Louisiana accepts our rendition and assesses and collects taxes to the same mid-point on that portion of our property which is located within the eastern half of the River. This bridge, constructed in 1897-8, under authority granted by the 53rd Congress, 2nd Session crosses the Sabine River between Starks, Louisiana, and Mauriceville, Texas. Each State assesses and collects an intangible tax based upon the mileage of our lines located within its boundaries. My reports and renditions to each State are based upon the mileage measured to the approximate geographic middle of the Sabine River, which has been accepted by the Texas State Intangible Tax Board, Newton County, Texas, Tax Assessor, and by the State Tax Commission of Louisiana as the correct boundary line between the States for many years. These reports have been filed annually with the Board since the present Texas Intangible Tax was levied in 1905, and have been filed with the Louisiana State Tax Commission and its predecessor since 1898. With these original reports, we exhibit a map showing the boundary line to which the K.C.S. bridge and tracks are measured for each State. There is attached hereto a true and correct copy of that portion of the maps which shows the bridge and boundary line to which each State has been assessing and collecting taxes. Original copies of this map have been exhibited or filed with the above mentioned taxing agencies of both States since at least 1940.

"The Louisiana Tax Commission also assesses and collects ad valorem taxes on that portion of these bridges

and tracks located east of the mid-stream line referred to above and has never assessed or collected any taxes west of such line.

"The State of Texas, through the County Tax Assessor-Collector of Newton County, has assessed and collected both State and County ad valorem taxes on that portion of the bridges and tracks which lie west of the mid-stream line referred to above, and the State of Texas has not assessed or collected any taxes east of such line.

"The line referred to above as the approximate geographic middle of Sabine River is a line which has been accepted through the years by both States approximately equi-distant from the east and west banks of Sabine River. To my knowledge, there has never been any contention by either of the respective taxing agencies that the line marking the extent of their taxing jurisdictions should be based on any other method of measurement or ascertainment.

"The above outlined procedure of assessment and rendition of taxes on this bridge by K.C.S. Ry. Co. and by both States has been used since 1898, and the records of my office indicate the same procedure for previous years." Emphasis supplied.

The first attached map shows a mid-Sabine boundary while the second contains this notation: "KCS Newton Co. Taxes begin at center of Sabine River."

Atchison, Topeka & Santa Fe Railway Company. An affidavit from G. E. Schuler (Texas' Exhibit E, pp. 34-36), Regional Tax Commissioner of the Atchison, Topeka & Santa Fe Railway Company, states:

"Our company has one railroad bridge across the Sabine River on which we render and Texas assesses and collects taxes to the approximate geographic middle of the channel of the River, and Louisiana accepts our rendition and assesses and collects taxes to the same mid-point on that portion of our property which is located within the eastern portion of the River. This bridge was constructed in 1906, and crosses the Sabine approximately 1.2 miles east of Bon Wier, Texas. The State of Texas and Newton County assess and collect an intangible tax based upon the mileage of our lines located within its boundaries. Our reports and renditions to each State are based upon the mileage measured to the approximate middle of the channel of Sabine River,

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which has been accepted by the Texas State Intangible Tax Board, by Newton County in behalf of itself and the State, and by the State Tax Commission of Louisiana as the correct boundary line between the States for many years. These reports have been filed annually with the said County and Board since the present Texas Intangible Tax, first levied in 1905, became applicable to the line in 1907, and have been filed with the Louisiana State Tax Commission and its predecessor since 1907. There is attached hereto a true and correct copy of that portion of the map which shows the bridge and boundary line to which each state has been assessing and collecting taxes. Original copies of this map have been exhibited to, or were available to, the above mentioned taxing agencies of both States since at least 1907.

"The Louisiana Tax Commission also assesses and collects ad valorem taxes on that portion of the bridge and tracks located east of the mid-stream line referred to above and has never assessed or collected any taxes west of such line.

"The State of Texas, through the County Tax Assessor-Collector of Newton County has assessed and collected both State and County ad valorem taxes on that portion of the bridge and tracks which lie west of the mid-stream line referred to above, and the State of Texas has not assessed or collected any taxes east of such line.

"The line referred to above as the approximate geographic middle of the channel of Sabine River is a line which has been accepted through the years by both States. To my knowledge, there has never been any contention by either of the respective taxing agencies that the line marking the extent of their taxing jurisdictions should be based on any other method of measurement or ascertainment.

"The above outlined procedure of assessment and rendition of taxes on this bridge by our company and by both States has been used since 1907, and the records of my office so indicate." Emphasis supplied.

The attached maps show a mid-Sabine boundary.

Gulf States Utilities Company. Texas' Exhibit E, pp. 46-47. The Gulf States Utilities Company has three transmission lines (apparently carrying crude oil) across the Sabine River. Two of the lines were constructed in 1949, while the third was constructed in 1969. Since these years of construction, Texas has collected ad valorem taxes on the lines west of the geogra-

phic middle of the Sabine, and Louisiana has collected on those east of that line. According to the Assistant Treasurer of Gulf States (Texas' Exhibit E, p. 46), to his knowledge Louisiana has never assessed or collected taxes to the west of the geographic middle of the Sabine.

The affidavits from tax officials of thirteen other pipeline companies are found in Texas' Exhibit G, pp. 115-59. All of the affidavits show that Texas assessed and collected taxes on that portion of the companies' lines west of the approximate geographic middle of the Sabine River, and that Louisiana assessed and collected east of the geographic middle. The affidavits clearly show that the taxing officials of both Texas and Louisiana have accepted the geographic middle of the Sabine River, equidistant from the east and west banks, as the boundary between the two States. There are several maps attached to these affidavits which show a mid-Sabine boundary.

2. Local Assessment

Orange County, Texas assesses and collects ad valorem taxes on various privately owned docks, wharves, utilities, railroads, and pipelines located in Orange County on, over, or under the western half of Sabine River. As stated in the Orange County Assessor-Collector's affidavit (Texas' Exhibit E, pp. 48-49), among these taxed properties are:

"1. The west half of the Levingston Shipbuilding Company's floating pontoon bridge across the Sabine from Orange to Louisiana Harbor Island, as well as a dock on wharf owned by Levingston on the west side of the River.

"2. Marine ways, sheet piling and outfitting docks of the American Bridge Division of U. S. Steel Company extending from the west bank of the Sabine into the western part of the River.

"3. Outfitting docks, marine ways, and floating dry dock of Weaver Shipyards located in Sabine River adjacent to the west bank.

"4. That portion of the Southern Pacific Railroad bridge and tracks from the west bank of Sabine River, near Orange, to the geographic center of the Sabine River.

"5. That portion of the Gulf States Utilities Company transmission line from the west bank of the Sabine to the geographic center of Sabine River where same crosses the river near Orange in Orange County.

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"6. Various oil and gas pipelines which cross the west half of Sabine River in Orange County, Texas.

"Taxes on the above described properties have been assessed and collected annually since the improvements were constructed, some of which date back for more than 30 years."

Records of the tax assessment of Sabine Lake mineral leases by Jefferson County, Texas, and Newton County, Texas, are found in Texas' Exhibit B, pp. 76-83. See also Texas' Exhibit G, pp. 160-61.

The city of Orange, Texas, has assessed and collected ad valorem taxes on property located in the western half of the Sabine River since 1914 (Texas' Exhibit E, pp. 50-51). A map and photo of the properties taxed are found in Texas' Exhibit E, pp. 51a and 64. Port Arthur, Texas has also assessed and collected ad valorem taxes since 1951 on various facilities in the western half of the Sabine River. A list of the taxed properties is given in Texas' Exhibit E, pp. 65-67.

(C.) PLEASURE ISLAND

Beginning in 1911, Port Arthur, Texas began to extend that city's eastern boundaries to the middle of Sabine Lake. Texas' Exhibit A, pp. 46-47; Texas' Exhibit B, pp. 69-71A. In 1914, Orange, Texas also included within its boundaries a portion of the western half of Sabine River. Texas' Exhibit E, pp. 52-56. The boundary was extended to the Sabine's "centerline" in 1955 and 1957. Texas' Exhibit E, pp. 57-63.

Apparently sometime after 1911, Port Arthur started reclaiming certain submerged lands in Sabine Lake. This land was used to create the filled land now known as Pleasure Island, comprising approximately 3,202 acres. The original west bank of Sabine Lake, prior to man-made fills, was on the west side of Pleasure Island. See Texas' Exhibit A, p. 47; Texas' Exhibit F, p. 35. A picture of Pleasure Island is found in Texas' Exhibit B, p. 71A.

Port Arthur has spent over a million dollars developing Pleasure Island, which now contains a municipal golf course, a recreational area and pleasure pier, a public boat marina, the local headquarters of the U. S. Corps of Engineers (Texas' Exhibit E, p. 77), the U. S. Army Reserve Training Center

(Texas' Exhibit E, p. 86), the U. S. Navy and Marine Reserve Training Center (Texas' Exhibit E, p. 87), and an athletic stadium (Texas' Exhibit E, p. 88).

Approximately \$489,600 was spent by Jefferson County, Texas and the State of Texas in building a hard-surface road on Pleasure Island, running from Pleasure Pier to Mesquite Point. Texas' Exhibit B, p. 70. There is at least one high-level, fixed-span bridge connecting Pleasure Island with the mainland. Texas' Exhibit E, p. 89. Most of the evidence concerning Pleasure Island is found in Texas' Exhibit E, pp. 68-92. See also Texas' Exhibit G, pp. 4-15.

In his affidavit (Texas' Exhibit B, pp. 69-71), Robert A. Bowers, City Engineer and Director of Planning for Port Arthur, Texas, states:

"Texas State, County and City law enforcement officers have for as long as I can remember enforced the laws of this State and the ordinances of Port Arthur on Pleasure Island. Louisiana officials have acquiesced in this. I have never heard of any protest from Louisiana against the City's ownership of, improvements on, or exercise of jurisdiction over the lands extending to the middle of Sabine Lake as shown on the map attached as Exhibit 'A' [Texas' Exhibit A, p. 46]." Mr. Bowers also testified at the New Orleans hearing. Transcript, pp. 243-300.

(D.) TEXAS PARKS AND WILDLIFE COMMISSION

According to an affidavit from the State Law Enforcement Coordinator for the Texas Parks and Wildlife Department (Texas' Exhibit B, pp. 57-59) and testimony given at the New Orleans hearing (Transcript, pp. 534-36, 541-42), the Texas wildlife officials have enforced the Texas game and fish laws on the west one-half of Sabine River, Sabine Lake, and Sabine Pass. Violations of the Texas laws on the western half of the Sabine were prosecuted in the Texas counties "whose boundaries extended by law to the center of said streams." The Louisiana officials did not attempt to enforce the Louisiana game and fish laws on the western one-half of the Sabine.

In 1967-1968 and 1969, the Texas Parks and Wildlife Commission and the Louisiana Wildlife and Fisheries Commission

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signed agreements (Texas' Exhibit B, pp. 60-68), authorized by the Louisiana Legislature (Texas' Exhibit C, pp. 15-18), which allowed the possessor of a fishing license from either State to fish anywhere in the "common boundary waters" of Texas and Louisiana. Louisiana claims these agreements cannot establish any legal boundary between the two States because they were "signed for the mutual benefit of both States since it was recognized that the citizens in both States had certain rights in the waters of Sabine Pass, Sabine Lake and Sabine River." Louisiana's Exhibit B, pp. 32-34. They are, however, items of evidence supporting the claim of assertion by Texas and acquiescence by Louisiana in a mid-Sabine boundary.

(E.) OTHER ITEMS OF PRESCRIPTION AND ACQUIESCENCE

(1) 1857. On March 19, 1857, the Louisiana Legislature approved an act appropriating \$15,000 "for the improvement of the Sabine River," on the condition that Texas would spend at least an equal amount for the same purpose. The title of the act states: "An Act to improve the navigation of the Sabine River." Texas' Exhibit C, p. 14; Louisiana's Exhibit H, pp. 34-35. On February 15, 1858, the Louisiana Legislature requested the Governor of Louisiana to forward to the Governor of Texas a copy of the March 19, 1857 Act. Louisiana's Exhibit H, pp. 11-12. See also Louisiana's Exhibit H, pp. 13, 27-28, 36-37.

(2) 1901-1902. *State v. Burton*. In the case of *State v. Burton*, 105 La. 516, 29 So. 970 (1901), a Louisiana bootlegger was selling liquor from a boat anchored in the western half of the Sabine River, but tied by a rope to a floating gambling establishment, which was in turn tied to the Louisiana river bank. The bootlegger was convicted of selling liquor without a Louisiana license. The Louisiana Supreme Court reversed the conviction on the ground that the defendant had been in Texas territory when making the sales, thus depriving Louisiana courts of jurisdiction. The court stated:

"It cannot be contended that Louisiana courts have jurisdiction over Texas territory. . . . That the middle of the Sabine river is the boundary line between Louisiana and Texas, see act of congress approved March 26, 1804, . . . treaty between the United States and Spain

made in 1819; Act Cong. July 5, 1848; act of the legislature of Texas approved November 24, 1849, which act is under and in accordance with the act of congress of 1848; . . . preamble of the constitution of Louisiana of 1812. . . . We do not see that the fact that the boat in question is tied to the Louisiana shore by means of a rope, and thereby made one, as it were, with a gambling establishment on the Louisiana shore, can make any difference in the matter. The jurisdiction of the Louisiana courts cannot be extended over Texas territory by means of a rope." Texas' Exhibit B, p. 86.

The Louisiana Attorney General's brief in the case (Texas' Exhibit B, pp. 87-98) contains the following: "The facts, therefore, are that the defendant sold liquor by retail on and from a boat *lying on the Texas side of the Sabine river*, a navigable stream, to citizens of Louisiana The mere fact that the boat, on which the whiskey was sold at retail, was not at the time on the eastern or Louisiana side of a line drawn down and along the middle of the Sabine river, but was on the Texas side of the line, does not militate against the right of the State of Louisiana to prosecute defendant" (emphasis supplied)

The decision was reaffirmed by the Louisiana Supreme Court in *State v. Burton*, 106 La. 732, 31 So. 291 (1902) (Texas' Exhibit C, pp. 21-22). This was a second prosecution against the bootlegger for selling liquor without a Louisiana license but this time he was found to have been selling on the *Louisiana* side of the river.

(3) 1910. On June 27, 1910, the Assistant Secretary of the United States Department of Interior issued an opinion to the Commissioner of the General Land Office on a dispute over certain islands in the Sabine River, which were claimed by Louisiana, Texas, and the United States (Texas' Exhibit B, pp. 1-8). The opinion stated that Louisiana's western boundary was the middle of the westernmost channel of the Sabine River.

The brief filed in the dispute by the State of Louisiana (Texas' Exhibit B, pp. 9-34) argued that Louisiana's western boundary went to the "middle of the main or sailing channel, of Sabine Pass, Sabine Lake and Sabine river, 'including all islands.'" The brief claimed that until Congress gave the western Sabine to Texas in 1848, the "United States enjoyed

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sovereignty and general jurisdiction over the remaining western half." Texas' Exhibit B, p. 19. See also Louisiana's Exhibit S ("Exhibit C" contained therein).

(4) 1959. In 1959, Louisiana filed a brief in the dispute before the United States Supreme Court over certain offshore submerged lands in the Gulf of Mexico (*United States v. Louisiana*, 363 U.S. 1 (1960)). The brief argued that Louisiana's western boundary was the middle of the Sabine, including all islands east of this mid-Sabine boundary. Texas' Exhibit C, pp. 30-32a. The record in this case is not all supportive of Texas' claim.

A portion of the oral argument in the case is found in Louisiana's Exhibit H, pp. 1-8. In that argument, the Attorney General of Texas, Will Wilson, now an Assistant Attorney General of the United States, refers to "the treaty between Spain and the United States in 1819, which fixed the boundary between Texas and Louisiana" (emphasis supplied) This is the claim of Louisiana in this case. Your Special Master, however, cannot give this oral statement in argument as great weight as the written statement in a brief and would emphasize as to each that the other acts of the parties support, by a great preponderance of the evidence, the Texas claim of assertion by Texas and acquiescence by Louisiana.

(5) 1965. Texas' Exhibit E, pp. 152-54. In July of 1965, the Texas Water Commission issued Bulletin 6516, "Geology and Ground-Water Resources of Orange County, Texas." The booklet was prepared by the United States Geological Survey in cooperation with several Texas agencies. The booklet contains a map showing a mid-Sabine boundary between Texas and Louisiana.

(6) *Texas and Louisiana State Highway Patrols*. An affidavit from C. L. Russell, Captain of the Texas Highway Patrol (Texas' Exhibit E, pp. 150-51), shows that Texas has enforced the Texas traffic laws and investigated traffic accidents west of the geographic middle of Sabine River. Captain Russell states that he has never heard of Louisiana officers seeking to enforce Louisiana law on the west half of the Sabine. "On the contrary, the middle of the river was recognized by the officers of both states and used as the state line boundary for all purposes."

Louisiana's Exhibit Q contains seventeen accident reports filed by the Louisiana Department of Public Safety, Division of State Police, one of which apparently occurred on the west side of Sabine River. Seven of the reports state that the accident took place east of the "LA-TEX LINE," "LA-TEXAS STATE LINE," or "Orange, Texas Line." The other nine reports only indicate that the accident occurred somewhere over the Sabine River.

INDEX OF EVIDENCE, INCLUDING EXHIBITS, ETC.

Texas Exhibit

- A Map Folio (49 pages)
- B Documents in support of Texas' Motion for Judgment (101 pages)
- C Documents in support of Texas' Motion for Judgment (128 pages)
- D Oil, gas, and mineral leases executed by the State of Louisiana (175 pages)
- E Documents and maps allegedly showing recognition and use of the geographic mid-Sabine River boundary by the United States Congress and federal agencies and taxation by Texas and other exercise of jurisdiction to such line by the State of Texas (196 pages)
- F Map Folio (81 pages)
- G Documents in support of Texas' Motion for Judgment (184 pages)
- H Geological Survey Bulletin 1212—"Boundaries of the United States and the Several States"
- I There is no Texas Exhibit I
- J Letter of December 31, 1970, from Price Daniel, Special Assistant Attorney General of Texas, to Robert Van Pelt, Special Master
- K Documents accompanying letter of December 31, 1970 (Exhibit J, *supra*)
- L Affidavit of William W. Kibler, Assistant Professor in the Department of French and Italian Languages, University of Texas at Austin
- M Resolution and Agreement of the Louisiana State Mineral Board with accompanying plat and division order

- N Pooling Agreement for certain leases executed by the State of Louisiana to the Ohio Oil Company, with attached plat
- O Consent of the State of Louisiana to a pooling agreement by the Ohio Oil Company, with attached plat
- P Oil Division Order dated May 28, 1952
- Q Oil Division Order dated June 20, 1952
- R Louisiana State Mineral Board Resolution with attached oil division order and letter
- S Oil Unitization Agreement dated September 7, 1954, with attached plat
- T Unitization Agreement dated June 15, 1961, with attached plat
- U Unitization Agreement dated June 15, 1961, with attached documents and plat
- V Resolutions of the Louisiana State Mineral Board with attached Gas Unit Pooling Agreement and Designation
- W Map of Sabine Lake and entrance to the Gulf of Mexico with the notation "Portion of D. 965 Surveyed by George Gauld 1777."
- X Profile of the water surface elevation of the Sabine-Neches Canal at the Port Arthur area office of the United States Corps of Engineers
- Y Photograph taken over Stewts Island in Sabine Lake, May 27, 1971
- Z Photograph taken above the Sabine-Neches Canal in the north end of Sabine Lake, May 27, 1971
- AA Aerial photograph of a portion of Sabine Lake, dated "10/12/1964"
- BB Map of Sabine Lake
- CC Field notes and map or survey dated March 4, 1861
- DD Map of Orange County, Texas, dated August, 1862

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- EE** Map of Orange County, Texas, dated June, 1897
- FF** Oil and Gas Lease No. 49749, executed by the State of Texas, with accompanying plat
- GG** Map of southern Louisiana showing shell leases executed by the State of Louisiana

Louisiana Exhibit

- A** Documents in opposition to Texas' Motion for Judgment (354 pages)
- B** Documents in opposition to Texas' Motion for Judgment (72 pages)
- C** Documents in opposition to Texas' Motion for Judgment (193 pages)
- D** Documents in opposition to Texas' Motion for Judgment (153 pages)
- E** Documents in opposition to Texas' Motion for Judgment (107 pages)
- F** Map Folio (9 pages)
- G** Large folio in opposition to Texas' Motion for Judgment
- H** Documents in opposition to Texas' Motion for Judgment (69 pages)
- I** Booklet entitled "The History and Regulation of the Shell Dredging Industry in Louisiana" (32 pages)
- J** Letter of August 3, 1970, with accompanying documents and maps
- K** Map Folio (23 pages)
- L** Documents in opposition to Texas' Motion for Judgment (93 pages)
- M** THOMAS MAITLAND MARSHALL, II A HISTORY OF THE WESTERN BOUNDARY OF THE LOUISIANA PURCHASE, 1819-1841 (1914)
- N** Letter of December 26, 1970, with attached documents

- O Letter of December 30, 1970, with attached exhibits O (1) through O (6)
- P Letter of May 18, 1971, with attached documents
- Q Letter of May 26, 1971, with attached accident reports
- R Letter of June 1, 1971, with attached exhibits R (a), R (b), and R (c)
- S Trial Memorandum on Behalf of the State of Louisiana and accompanying "Exhibits" A, B, and C
- S (1) A Message from President Tyler to the United States Congress
- T Affidavit of Gordon Johnson
- U Index or Digest of Items in Evidence dated (a) before 1941 and (b) after 1941
- V Map Folio (17 pages)
- W (1) and
- W (2) Stereoscopic photographs of a portion of Sabine Lake, December 1, 1930
- X (1) -
- X (4) "Aerial Mosaics" of portions of Sabine Lake, October, 1955
- Y, Y (1), and
- Y (2) Three Quadrangle Maps by the United States Geological Survey
- Z (1),
- Z (2) Stereoscopic photographs of a portion of Sabine Lake, November 17, 1955
- AA (1),
- AA (2) Stereoscopic photographs of a portion of Sabine Lake, March 23, 1968
- BB (1), BB (2) and
- BB (3) Official Louisiana Township plats
- CC (1) -
- CC (4) Map of the Sabine River around the "Narrows," together with copies of three maps drawn from the

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notes of Survey of the Commission appointed to survey the boundary between the United States and the Republic of Texas under the Convention of April 25, 1838, which relate to the land portion of the boundary

Also in Evidence

State of Louisiana's Interrogatories to the State of Texas

State of Texas' Reply to the Interrogatories of the State of Louisiana

State of Texas' Requests for Admissions addressed to the State of Louisiana

State of Louisiana's Response to State of Texas' Requests for Admissions

For Oral Evidence, see:

Reporter's Transcript of Proceedings before Special Master in Houston, Texas, on December 16, 1970 (one volume)

Reporter's Transcript of Proceedings before Special Master in New Orleans, Louisiana, on June 9-10, 1971 (two volumes)

Items as to Which Counsel Agreed the Special Master Could Take Judicial Notice

A. TEXTBOOKS

2 ADAMS, HISTORY OF THE UNITED STATES

S. F. BEMIS, JOHN QUINCY ADAMS AND THE FOUNDATION OF AMERICAN POLICY (1956)

2 J. H. BROWN, HISTORY OF TEXAS, 1689-1892

1 CHAMBERS, HISTORY OF LOUISIANA

4 CHANNING, HISTORY OF THE UNITED STATES

CREASY, FIRST PLATFORM ON INTERNATIONAL LAW

4 GAYARRE, HISTORY OF LOUISIANA

Appendix

J. K. HOSMER, HISTORY OF THE LOUISIANA PURCHASE (1902)

T. JEFFERSON, THE LIMITS AND BOUNDS OF LOUISIANA (1804),
in DOCUMENTS RELATING TO THE PURCHASE AND EXPLORATION
OF LOUISIANA (1904)

8 MANNING, DIPLOMATIC CORRESPONDENCE OF THE UNITED
STATES

4 MEMOIRS OF JOHN QUINCY ADAMS

5 MEMOIRS OF JOHN QUINCY ADAMS

5 MESSAGES AND PAPERS OF THE PRESIDENTS (Polk, Inaugural
Address, 1845)

3 MILLER, TREATIES AND OTHER INTERNATIONAL ACTS OF THE
UNITED STATES OF AMERICA (1934)

2 A. L. SHALOWITZ, SHORE AND SEA BOUNDARIES (Coast and
Geodetic Survey, U. S. Department of Commerce 1962)

4 STATE PAPERS, FOREIGN RELATIONS

2 M. M. WHITEMAN, DIGEST OF INTERNATIONAL LAW (U. S.
Department of State 1963)

19 THE WRITINGS OF THOMAS JEFFERSON, MONTICELLO EDITION
(1904)

B. PERIODICALS

Cox, *The Louisiana-Texas Frontier*, 17 SW. HISTORICAL Q.
1-42, 140-87 (1913)

Manning, *Texas and the Boundary Issue, 1822-1829*, 17 SW.
HISTORICAL Q. 217, 240-60 (1913)

Schwarzenberger, *Title to Territory: Response to a Challenge*, 51 AM. J. INT'L L. 308 (1957)

Stenberg, *Jackson's Neches Claim, 1829-1836*, 39 SW. HISTORICAL Q. 255

Stenberg, *The Texas Schemes of Jackson and Houston, 1829-1836*, 13 SW. SOCIAL SCI. Q. 264-86; 15 SW. SOCIAL SCI.
Q. 299-350

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C. MISCELLANEOUS

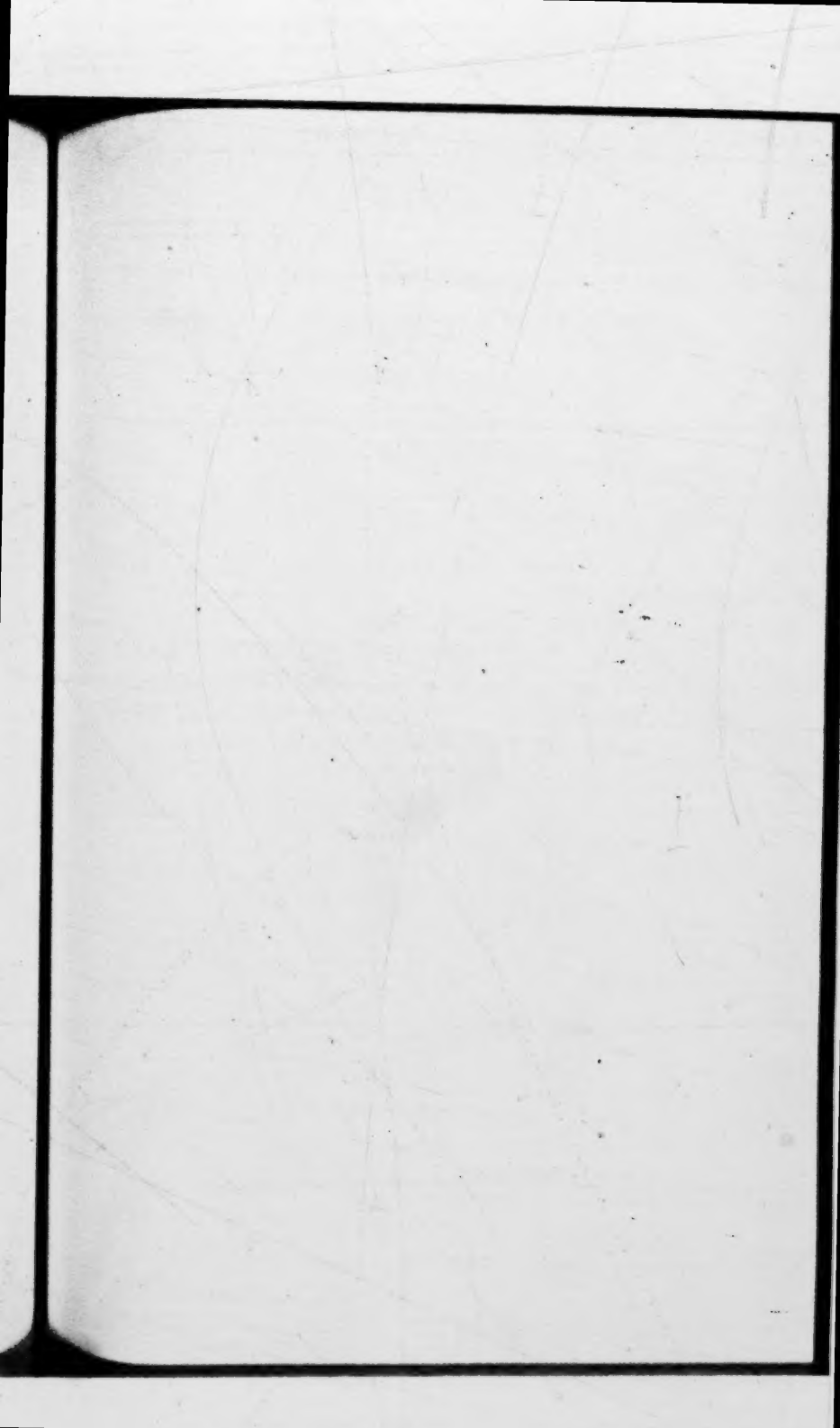
Compilation of River and Harbor Acts, three volumes, compiled and published by the United States Army Corps of Engineers (1913)

CONG. GLOBE, 24th Cong., 2d Sess. 270 (1837)

Douglas, *Boundaries, Areas, etc. of the United States and the Several States*, GEOLOGICAL SURVEY BULL. No. 817 (1930)

B. Hermann (Commissioner of the United States General Land Office), *The Louisiana Purchase*, H.R. Doc. No. 708, 56th Cong., 1st Sess. (1900)

U. S. DEPARTMENT OF THE INTERIOR, GEOLOGICAL SURVEY BULL. Nos. 13 (1885); 171 (1900); 226 (1904); 689 (1923).



No. 36 ORIGINAL

Supreme Court, U. S.
FILED

JUL 4 1972

MICHAEL ROBAK, JR., CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**EXCEPTIONS OF THE STATE OF LOUISIANA
TO THE REPORT OF THE SPECIAL MASTER
AND MOTION OF THE STATE OF LOUISIANA
FOR ORAL ARGUMENT ON THE
EXCEPTIONS**

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No. 36 ORIGINAL

**In the
Supreme Court of the United States**

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**EXCEPTIONS OF THE STATE OF LOUISIANA
TO THE REPORT OF THE SPECIAL MASTER
AND MOTION OF THE STATE OF LOUISIANA
FOR ORAL ARGUMENT ON THE
EXCEPTIONS**

I.

**EXCEPTIONS TO THE SPECIAL MASTER'S
REPORT**

Comes now the State of Louisiana, (Louisiana) through its Attorney General, pursuant to the Order of this Court of May 22, 1972, and excepts to the Special Master's report in the following respects:

LOUISIANA'S EXCEPTION No. 1

Louisiana excepts to the finding by the Special Master in which he held the State of Texas (Texas) legally extended its boundary from the West bank of the Sabine River, Lake, and Pass (Sabine) to the geographical middle of the Sabine, from the Gulf of

Mexico to the 32° of North Latitude by Act of the Texas Legislature of November 24, 1849, (3 Gammel's Laws of Texas, 442) so as to acquire title to the bed and subsoil of that portion of the River which belonged to Louisiana. The purported extension was based on an Act of Congress of July 5, 1848. (9 Stat. 245, Ch. 94, 30th Congress, 1st Session)¹

This Exception is based on, among other grounds, the following:

(a) Louisiana's Western boundary was recognized as being on the West bank of the Sabine from the Gulf of Mexico to the 32° of North Latitude, and thence North to the 33° of North Latitude by the Treaty of Amity of 1819 between Spain and the United States² affirmed by the Treaty of Limits of 1828 between Mexico and the United States³ and again affirmed in the Treaty between the United States and the Republic of Texas;⁴ the said boundary was surveyed and staked in 1839-1841 by a Joint Commission appointed by the Republic of Texas and the United States,⁵ before Texas was admitted into the Union.

(b) The Treaties referred to under (a) hereof provided that "the use of the waters, and the navigation of the Sabine to the sea . . . throughout

¹ See: Page 17, Report of Special Master.

² The Treaty of Amity, Settlement, and Limits Between the United States and Spain, 1819 (8 Stat. 252).

³ The Treaty of Limits Between the United States and the United Mexican States, 1828 (8 Stat. 372).

⁴ Boundary Convention Between the United States and the Republic of Texas, 1838 (8 Stat. 511).

⁵ See: Louisiana Exhibit A, Item 13; Exhibit F, Items 2 and 3; *Fragoso v. Cisneros*, 154 S.W.2d 991 (Court of Civil Appeals of Texas, 1941).

the extent of said boundary, on their respective banks, shall be common to the respective inhabitants of both nations." This meant the inhabitants of the Province of Texas and Louisiana had common use of the water of the Sabine. The Special Master erroneously construed the Act of Congress of 1848 as transferring title to Texas to the bed and subsoil of the West half of the Sabine from the Gulf of Mexico to the 32° of North Latitude, which belonged to Louisiana, instead of granting jurisdiction to Texas to enforce criminal laws over the waters of the Sabine as urged by Louisiana.⁶ This construction makes the Act of Congress of 1848 unconstitutional as an attempt to transfer land belonging to Louisiana to Texas, without the consent of the Legislature of Louisiana.⁷

(c) The Special Master erroneously found "thus it would appear that the United States was holding the western half of the Sabine as a territory of its own, to be given to Texas should it become a part of the United States."⁸ The Treaty of Amity of 1819 settled not only the boundary between the Province of Texas and Louisiana, but established the boundary between other territory of the United States and Spain, including that portion of the boundary separating the Province of Texas along the Red River from the territory of the United States. When Texas was admitted into the Union as a State, its boundary was fixed on

⁶ *State of Washington v. State of Oregon*, 29 S.Ct. 631, 214 U.S. 205, 53 L.Ed. 969 (1909).

⁷ United States Constitution, Article IV, Sec. 3; *Louisiana v. Mississippi*, 202 U.S. 1, 26 S.Ct. 408, 50 L.Ed. 913 (1906).

⁸ Page 22, Report of Special Master.

the south bank of the Red River and the west bank of Sabine. Texas did not acquire title to the geographic middle of the Red River, although it made that claim in several cases before this Court, involving its boundary with Oklahoma.⁹ Texas' boundary was established and recognized on the South bank of the Red River as its boundary was established and recognized on the West bank of the Sabine, thus the United States was not holding the half of either river for Texas.

(d) The Special Master failed to give proper weight to the fact that when Louisiana was admitted into the Union as a State in 1812, there was in existence an agreement made in 1806 between the United States, represented by General Wilkinson, and Spain, represented by Lieutenant Colonel Herrera, creating a neutral zone from the Sabine on the West to the Mermentau River on the East, in which it was agreed that neither party would exercise any jurisdiction and authority in the neutral zone until the boundary was settled between Spain and the United States.¹⁰ Even though the Constitution of the State of Louisiana, adopted in 1812, provided: "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty second degree

⁹ *Oklahoma v. Texas*, 253 U.S. 465, 40 S.Ct. 580 (1919); *Oklahoma v. Texas*, 256 U.S. 602, 41 S.Ct. 539 (1920); *Oklahoma v. Texas*, 258 U.S. 574, 42 S.Ct. 406 (1921); *Oklahoma v. Texas*, 260 U.S. 606, 43 S.Ct. 221 (1922); *Oklahoma v. Texas*, 261 U.S. 340, 43 S.Ct. 376 (1922); *Oklahoma v. Texas*, 272 U.S. 21, 47 S.Ct. 9 (1926).

¹⁰ See: Louisiana Exhibit C, Item 2; also see, Appendix to Brief of the State of Louisiana in Support of the Exceptions to the Report of Special Master and in Support of the Motion for Oral Argument.

of latitude-thence due north to the Northernmost part of the thirty third degree of north latitude. . . .", Louisiana, nevertheless, had no jurisdiction or authority over the area included in the neutral zone. Louisiana did not know where its western boundary was located, whether on the Mermen-tau River, or the Sabine or at some point in between. The issue of the neutral zone was not settled until the Treaty of Amity in 1819, when the boundary was established on the West bank of the Sabine, which boundary was the western boundary of Louisiana.¹¹

(e) The Special Master failed to give proper weight to the fact that President John Quincy Adams, who negotiated the Treaty for the United States in 1819, and Secretary of State, Henry Clay, who was in Congress when Louisiana was admitted into the Union, stated in official correspondence to the Congress of the United States that the settlement of the western boundary of the United States from the Gulf of Mexico to the 33° of North Latitude established the western boundary of the State of Louisiana. This was true of statements of Presidents Van Buren and Tyler to the United States Congress about 1840.¹²

(f) The Special Master failed to give proper consideration to the fact that Texas recognized by stipulation its eastern boundary from the 32° of North Latitude to 33° of North Latitude was settled by the Treaty of Amity of 1819. After such boundary was surveyed and staked in 1839-1841, the Western boundary lines of certain

¹¹ See: *Fragoso v. Cisneros*, supra.

¹² See: Louisiana Exhibit A, Items 8, 9, 12, 14 and 15.

Louisiana Parishes were made to conform to the treaty boundary, and the Surveyor General of the United States adjusted townships along the treaty boundary in Louisiana to coincide with the boundary as surveyed.¹³ Texas makes no claim east of the treaty boundary North of the 32° of North Latitude.¹⁴

LOUISIANA'S EXCEPTION No. 2

Louisiana excepts to the finding of the Special Master that Louisiana lost the bed and subsoil of the West half of the Sabine from the Gulf of Mexico to the 32° of North Latitude by acquiescence and prescription.

This Exception is based on, among other grounds, the following:

(a) There was no boundary line run out, located and marked in the geographic middle of the Sabine from the Gulf of Mexico to the 32° of North Latitude, which has been recognized and acquiesced in by Louisiana.¹⁵ The only boundary line actually surveyed and staked was that in 1839-1841, which has been possessed by Louisiana on the landed portion from the 32° of North Latitude to the 33° of North Latitude and on the water portion from the Gulf of Mexico to the 32° of North Latitude to the extent permitted under the Treaty of 1819.

¹³ See: Louisiana Exhibit A, Items 20, 21 and 22, and Exhibit G.

¹⁴ See: Pre-Trial Order and Stipulation dated September, 1970, particularly stipulation 3(b).

¹⁵ *State of Virginia v. State of Tennessee*, 13 S.Ct. 728, 148 U.S. 503, 37 L.Ed. 537 (1893).

(b) Both Texas and Louisiana, under the various Treaties, commencing with the Treaty of 1819, had the "use"¹⁶ and "navigation" of the waters of the Sabine. These rights were co-equal and extended through the width and breadth of the Sabine. Neither State could deprive the inhabitants of the other State from the exercise of these rights, which included, among other rights, the right to fish, hunt, and have access to the waters of the Sabine. Neither State could construct facilities in the Sabine that would affect the use of the water and the navigation thereon, if objected to by the other. The Special Master failed to give proper consideration to this unusual Treaty provision in considering acts of possession, which provision distinguishes the facts of this case from the cases relied on by the Special Master in maintaining Texas' plea of acquiescence and prescription.

(c) The Special Master held "the taxing of disputed *land* is to be given considerable weight in determining whether a State has acquiesced in the other State's ownership of the land . . ."¹⁷ (Emphasis ours) Neither Texas or Louisiana

¹⁶ "Use" is defined by Webster Dictionary as "the act of using or the state of being used; usage; the power or ability to use: as, he has regained the *use* of his hand; the right or permission to use: as, he granted them the *use* of his name; the need, opportunity, or occasion to use: as, we will have no further use for his services; way of using; the quality that makes a thing useful or suitable for a given purpose; advantage; usefulness; worth; utility."

Black's Law Dictionary, page 1710 states "The 'use' of a thing means that one is to enjoy, hold, occupy or have some manner of benefit thereof."

See also Vol. 43A Words and Phrases, commencing at page 248.

¹⁷ Page 28, Report of Special Master.

taxed the bed and subsoil of the West half of the Sabine. The Special Master erred by applying the above holding, pertaining to the taxing of *land*, to the taxing of structures by Texas in the West half of the Sabine. Texas had the right to authorize the construction of structures, subject to the approval of the United States Corps of Engineers in the Sabine under its right of "use" so long as Louisiana did not object.

(d) The Special Master was in error in holding that Resolution No. 212 of the Legislature of Louisiana, approved March 16, 1848, constituted an act of acquiescence by Louisiana to a mid-Sabine boundary, when, in fact, the resolution affirmatively stated Louisiana's boundary was on the West bank of the Sabine.¹⁸ The purpose of the resolution was to extend the *jurisdiction* of Louisiana to the West bank so "that crimes and offences committed thereupon should be punished, and wrongs and damages inflicted should be redressed in a speedy and convenient manner." The approval of the Congress of the United States was asked because the inhabitants of both States had the "use" of the water.

(e) The Special Master was in error in holding the statements of U. S. Senators Johnson and Downs, in which they expressed their acquiescence to the bill before Congress to extend the boundary of Texas to the middle of the Sabine to "enable the latter to extend her criminal jurisdiction to the Louisiana boundary," was acquiescence by Louisiana to a mid-Sabine boundary by Texas.¹⁹

¹⁸ See: Page 29, Report of Special Master; Louisiana Exhibit A, Item 19 (pp. 288-288A).

¹⁹ See: Page 28-29, Report of Special Master.

first because the United States Senators were only talking about criminal jurisdiction, and second, the United States Senators had no right to give away Louisiana territory. The Legislature of Louisiana was the only body that could transfer Louisiana territory,²⁰ and the Louisiana Legislature had just spoken, by Resolution No. 212, that Louisiana's boundary was on the West bank of the Sabine.

(f) The Special Master was in error in giving weight to documents and assertions of ownership by Texas to the West Half of bed and subsoil of the Sabine after 1941, when the Governor of Louisiana gave official notice to the Governor of Texas of Louisiana's West bank boundary claim along the Sabine.²¹

(g) The Special Master failed to recognize the undisputed understanding between representatives of Texas and Louisiana that the boundary question between the two States would not be advanced during the Tidelands litigation with the United States, which commenced in 1947, and ended for Texas on May 5, 1969.²² This suit was filed by Texas on the 10th day of December, 1969 and this Court granted Texas' motion on February 27, 1970.²³

LOUISIANA'S EXCEPTION No. 3

Louisiana excepts to the finding of the Special Master that the "Thalweg Doctrine" does not apply

²⁰ U. S. Constitution, Article IV, Sec. 3.

²¹ See: Louisiana Exhibit B, Item 1.

²² 394 U.S. 836, 89 S.Ct. 1614 (1969).

²³ 397 U.S. 931.

in this case, if Louisiana's West bank claim is rejected.

This Exception is based on, among other grounds, the following:

(a) In the absence of a treaty boundary, where a navigable river forms the boundary between two States, the boundary follows the "Thalweg." The only treaty boundary here is on the West bank of the Sabine and it is admitted that the Sabine is navigable.

(b) There has been no surveyed and agreed to mid-Sabine boundary. The Special Master recognizes this fact by asking for authority to appoint a surveyor to locate such a boundary.²⁴ The cases of *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1940); *Arkansas v. Tennessee*, 246 U.S. 158, 170 (1918); *Iowa v. Illinois*, 147 U.S. 1, 10 (1893), relied on by the Special Master do not sustain his holding that a mid-Sabine boundary was established by acquiescence and prescription.²⁵

(c) Louisiana's boundary extended to the channel between the westernmost island in the West half of the Sabine and the West bank of the Sabine. In failing to recognize this principle, the Special Master failed to follow the holding of this Court in *State of Georgia v. State of South Carolina*, 42 S.Ct. 173, 57 U.S. 516, 66 L. Ed. 347 (1922).

(d) The recommendation by the Special Master

²⁴ See: Page 34, Report of Special Master.

²⁵ See: Pages 32-33, Report of Special Master.

that the boundary be established in the geographical middle of the Sabine does not state at what point in time the geographic middle is to be determined, that is, in 1812, 1849, or some later date. The record established that, even on the maps introduced in evidence which purport to have a center line, there are variations on the center line from time to time, depending on what channel is used and as to what bank is used at a particular time.²⁶ If a mid-Sabine boundary is recognized by this Court it must be as it was in 1812 when Louisiana was admitted as a State.

LOUISIANA'S EXCEPTION No. 4

Louisiana excepts to the findings by the Special Master that the islands formed in the West half of the Sabine after 1812 belonged to Texas, and that Louisiana could lose title to the islands in the West half of the Sabine that existed in 1812 by acquiescence, prescription, or erosion.²⁷

This Exception is based on, among other grounds, the following:

(a) The Master was correct in determining that all islands in the Sabine in 1812 whether in the East half or the West half belonged to Louisiana. This means, according to the opinion of the Assistant Secretary of the Interior to the Commissioner General of the Land Office in 1910, that the boundary of Louisiana extended to the channel

²⁶ See: Transcript pp. 518-522 (Testimony of Hatley N. Harrison, Jr., Chief, Lands & Surveys Division, Department of Public Works, State of Louisiana).

²⁷ See: Pages 36-37, Report of Special Master.

west of the islands.²⁸ The boundary of Louisiana did not change, even if an island eroded.

(b) Louisiana is entitled to all islands in the Sabine. There was nothing in the Act of Admission of Louisiana limiting the islands to those existing in 1812. No islands in the Sabine were conveyed to Texas in 1848.

(c) The Special Master held that oyster reefs or shell banks were not islands.²⁹ The definition of an "island" found in the Convention on the Law of the Sea adopted by the United Nations Conference at Geneva in 1958 and ratified by the U. S. Senate, provides:

"Art. 10"

"10. An island is a naturally formed area of land, surrounded by water, which is above water at high tide."

which provision should govern in this case. Therefore, the Special Master was in error in stating, categorically, that oyster reefs and shell banks are not islands, without considering whether they met the definition of islands provided above.

II.

Comes now the State of Louisiana, through its Attorney General, and moves this Court, in view of the importance of this litigation as to the State of Louisiana in settling its Western boundary with Texas, that this case be set down for oral argument after the briefs have been filed.

²⁸ See: Louisiana Exhibit N, p. 4; Texas Exhibit B, Items 1 and 6.

²⁹ See: Page 37, Report of Special Master.

In further response to said Order, Louisiana files its brief concurrent with the foregoing Exceptions and Motion, and in support thereof.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned, Attorney General of the State of Louisiana, Defendant herein, hereby certifies that on the 1st day of July, 1972 I served copies of the foregoing Exceptions of the State of Louisiana to the Special Master's Report in this original action by depositing same in a United States Post Office, with sufficient first class postage prepaid, addressed to:

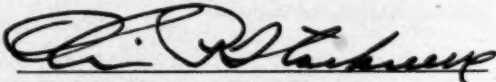
HONORABLE ROBERT VAN PELT,
Senior U. S. District Judge,
Special Master,
Lincoln, Nebraska.

HONORABLE CRAWFORD C. MARTIN,
Attorney General of Texas,
Austin, Texas.

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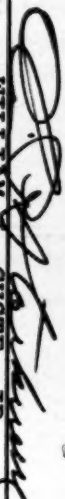
such being their mailing addresses.

BATON ROUGE, LOUISIANA, July 1st,
1972.


For: WILLIAM J. GUSTE, JR.
Attorney General, State of Louisiana

CERTIFICATE

I, WILLIAM J. GUSTE, JR., Attorney General of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of July, 1972, I served copies of the foregoing exceptions by transmitting conformed copies of the same, by first class mail, postage prepaid to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General of the United States, in compliance with Rule 33.2(b) of the Rules of the Supreme Court of the United States, since the Report of Special Master has raised the question of constitutionality of an Act of Congress of July 5, 1848 (9 U.S. Stat. 245).


For: WILLIAM J. GUSTE, JR.,
Attorney General,
State of Louisiana.

No. 36 ORIGINAL

FILED
JUL 4 1972

MICHAEL RODAK, JR., CLERK

**In the
Supreme Court of the United States**

(OCTOBER TERM, 1969)

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**BRIEF OF THE STATE OF LOUISIANA IN
SUPPORT OF THE EXCEPTIONS TO THE
REPORT OF THE SPECIAL MASTER AND IN
SUPPORT OF THE MOTION FOR
ORAL ARGUMENT**

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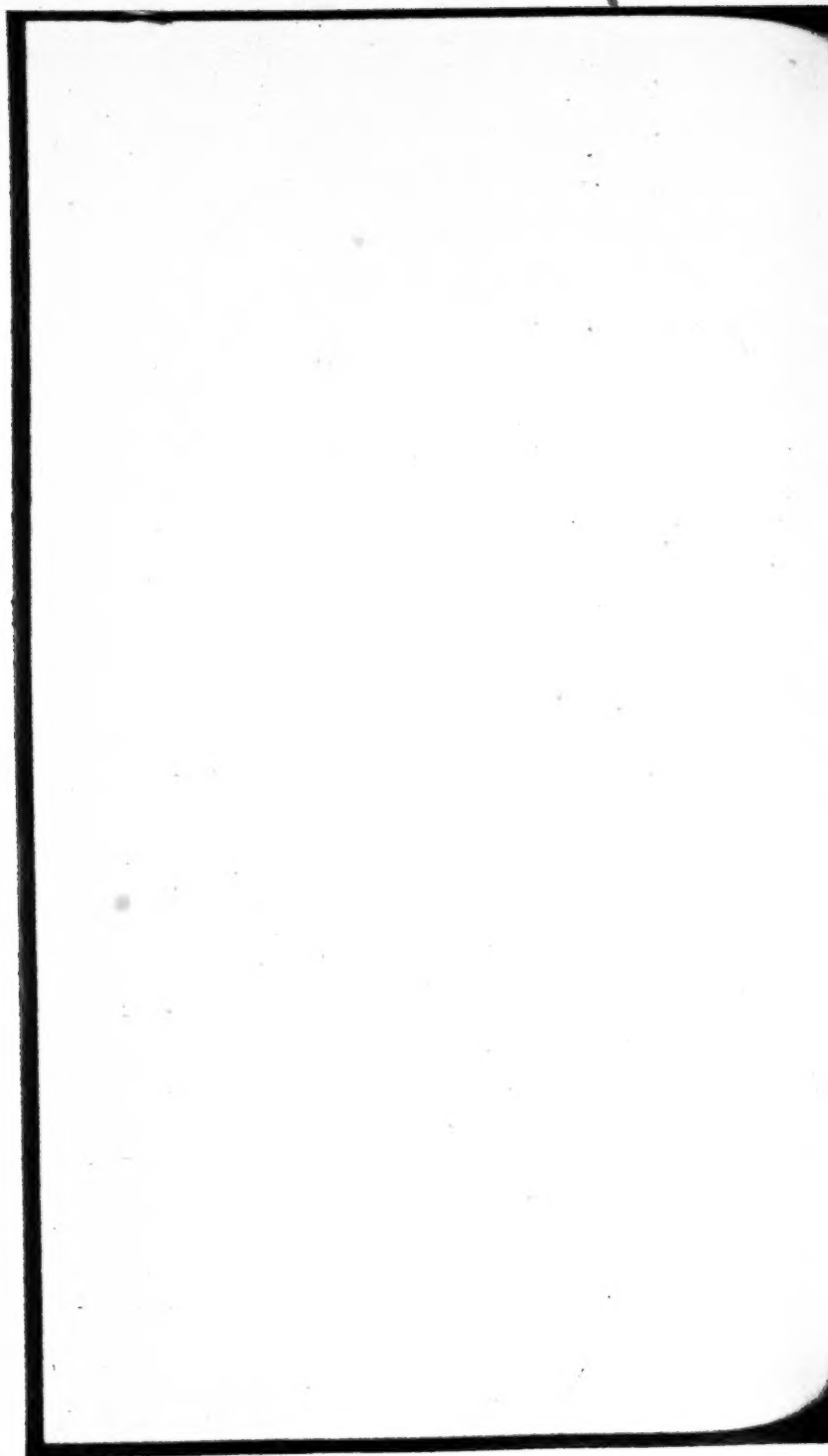
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No. 36 ORIGINAL

**In the
Supreme Court of the United States**

(OCTOBER TERM, 1969)

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v.

THE STATE OF LOUISIANA,

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**BRIEF OF THE STATE OF LOUISIANA IN
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REPORT OF THE SPECIAL MASTER AND IN
SUPPORT OF THE MOTION FOR
ORAL ARGUMENT**

PRELIMINARY STATEMENT

This is an original action instituted by the State of Texas (Texas) against the State of Louisiana (Louisiana) to establish its rights as against Louisiana to the jurisdiction and ownership of the west half of Sabine Pass, Sabine Lake and Sabine River (Sabine) from the mouth of the Sabine in the Gulf of Mexico to the 32° of north latitude and for a decree confirming the boundary of the two states in the middle of said stream.

After Texas was permitted to file this suit,¹ Louisiana filed motions, answer and counter-claim urging its boundary to be on the west bank of the Sabine from

¹ *State of Texas v. State of Louisiana*, 397 U.S. 931, 90 S.Ct. 939 (1970).

the Gulf of Mexico to the 32° of north latitude, thence north to the 33° of north latitude. Texas, by stipulation, removed any adverse claim to Louisiana's boundary from the 32° of north latitude to the 33° of north latitude.

The case was then referred to the Honorable Robert Van Pelt, Senior Judge of the United States District Court for the District of Nebraska, as Special Master, for further proceedings and "to submit such report as he may deem appropriate."²

The Special Master held hearings, received evidence and forwarded his report to this Court on the 4th day of May, 1972.³ By order of this Court dated May 22, 1972, Texas and Louisiana were granted forty-five days to file exceptions to the report and supporting briefs. Louisiana files simultaneously with this brief its exceptions to the report of the Special Master.

We are not here dealing with a dispute over a boundary between two states of recent origin. Nor are we dealing with a water boundary that has been surveyed, established and recognized by both states. These facts are made clear by a statement of Mr. Jerry Sadler, Commissioner of the General Land Office of Texas, in his letter of December 14, 1964 to Mr. J. C. Bonne-

² *State of Texas v. State of Louisiana*, 398 U.S. 934, 90 S.Ct. 1833 (1970).

³ The Special Master found: "Most of the facts, except as to the islands in the Sabine River [the Master uses the term "Sabine River" to include the River, Pass, and Lake, unless otherwise noted] in 1812, appear to your Special Master to be undisputed. The disputes largely center about the conclusions to be drawn from the facts." Page 12, Report of Special Master.

carrere, Executive Secretary of the State Mineral Board of Louisiana, when he said:

*"It has long been recognized by officials of both Louisiana and Texas that the exact location of the boundary between the two states has been in dispute and from our past discussions and correspondence, it is apparent that both states recognize the seriousness of the problem and the need for a settlement."*⁴

We briefly mention, in this introductory statement, the fact that this is an unusual boundary case between two sovereign states because it involves (1) navigable bodies of water in which the inhabitants of both states by treaty have the non-exclusive "use" and "navigation" of the water throughout the extent of these bodies of water and (2) Louisiana's western boundary was located by treaty on the west bank of the Sabine after Louisiana was admitted as a state and which boundary coincided with Texas's boundary when it was admitted as a state.

Louisiana takes exception to the Special Master's report; first, in finding that Louisiana's boundary was not located, and fixed by treaties after it was admitted into the Union and the boundary later surveyed and staked on the west bank of the Sabine and the finding that Texas acquired the bed and subsoil of the west half of the Sabine by Act of Congress of 1848; secondly, for holding that Louisiana lost title to the bed and subsoil of the west half of the Sabine by acquiescence and prescription; thirdly, in the alternative, for hold-

⁴ Louisiana Exhibit B, Item 8.

ing the thalweg doctrine does not apply, and that Louisiana's boundary does not extend to the channel of the Sabine west of the most westerly islands in the Sabine; and lastly, in the alternative, in failing to hold Louisiana owned all of the islands in the Sabine whether or not they existed in 1812. The Special Master correctly held Louisiana owned all the islands in the Sabine in 1812.

This brief addresses itself to all of Louisiana's exceptions to the Special Master's report, but they shall not be taken up and pursued necessarily in the order presented. The reason for this departure from sequence is for the purpose of clarity, cohesive argument and to prevent repetition.

When the Republic of Texas was admitted as a state into the Union in 1845, Congress consented that the territory properly belonging to the Republic of Texas may enter the Union as a new state called the "State of Texas".⁵ The Republic of Texas accepted the conditions,⁶ and by joint resolution of Congress, approved December 29, 1845, Texas was admitted as one of the States of the Union.⁷

At the time the Republic of Texas was admitted as a state into the Union, its eastern boundary had been fixed on the west bank of the Sabine from the Gulf of Mexico to the 32° of north latitude and thence north to the 33° of north latitude, which coincided with the west boundary of Louisiana.

⁵ 5 U.S. Stat. 797.

⁶ 1 Sayles Early Laws of Texas at pages 567-69, art. 1531.

⁷ 9 U.S. Stat. 108.

SUMMARY OF POINTS FOR ARGUMENT

POINT "A"

The Special Master found that Texas legally extended its boundary which was fixed on the west bank of the Sabine to the geographical middle of these bodies of water from the Gulf of Mexico to the 32° of north latitude. This holding was based on an Act of the Legislature of Texas of November 24, 1849 and an Act of Congress of July 5, 1848. If Louisiana's west boundary is on the west bank of the Sabine from the Gulf to the 32° of north latitude, as established by the Treaty of Amity of 1819, then Texas could not extend its boundary so as to acquire from Louisiana title to the bed and subsoil of the west half of the Sabine and neither could the Congress of the United States authorize such a transfer. The first issue, therefore, before this Court is whether Louisiana's west boundary was fixed and established on the west bank of the Sabine by the Treaty of Amity of 1819, approved by later treaties, and surveyed and staked in 1839-41. The diplomatic correspondence, Acts of Congress, and Acts of the State of Louisiana support the fact that Louisiana's boundary *was* established on the west bank of the Sabine by the Treaty of 1819, which was later surveyed and staked in 1839-41.

POINT "B"

Louisiana maintains that the Act of the Texas Legislature of 1849, the Act of Congress of July 5, 1848, and Acts of the Legislature of Louisiana, merely

authorized Texas to assert criminal jurisdiction over the west half of the Sabine and did not transfer title to the bed and subsoil of the west half of the Sabine to Texas.

The Special Master held Louisiana lost title to the bed and subsoil of the west half of the Sabine by acquiescence and prescription. We are here dealing with a *water boundary*, as claimed by Texas, which has never been surveyed and staked. The only boundary between Texas and Louisiana that has been surveyed and staked is the boundary on the west bank of the Sabine, which was surveyed and staked in 1839-1841. There is no dispute over this fact. In passing on the question of acquiescence and prescription it will be necessary for this Court to consider the rights of the inhabitants of Texas and Louisiana (as established, first, by the Treaty of Amity of 1819 and later ratified by subsequent treaties) to the "use" and "navigation" of the waters of the Sabine. The inhabitants of both States had co-equal rights extending throughout the length and width of the Sabine, which meant, among other things, that they could construct wharves, fish and hunt in the waters and navigate the waters. Louisiana has exercised rights in the west half of the Sabine, consisting of granting shell leases and oil and gas leases and Texas has exercised rights in the west half of the Sabine. It is Louisiana's position that the acts Texas relies on to establish acquiescence and prescription were performed under the right to "use" and "navigate" the waters of the Sabine and under the "dominant servitude" of the United States over naviga-

ble waters. They did not have the effect of possessing the bed and subsoil adverse to Louisiana.

Louisiana has and continues to assert its ownership to the west half of the Sabine. We respectfully urge that the evidence, when interpreted in the above light, does not sustain the Special Master's holding that Louisiana lost the bed and subsoil of the west half of the Sabine by acquiescence and prescription.

POINT "C"

While Louisiana maintains that its boundary is on the west bank of the Sabine, nevertheless, if this Court disagrees and holds that Louisiana is bound by the statutory language of its Constitution of 1812, which provided:

"Beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude",

then Louisiana maintains that its boundary should be along the main channel of the Sabine, west of the most westerly island in the Sabine as it existed in 1812. This Court, in many cases, has interpreted a phrase similar to "middle of said river" as being in the middle of the *main navigation channel*. The "Thalweg Doctrine" was applied to Louisiana's water boundary with the State of Mississippi.

There has never been any mid-stream boundary surveyed and accepted by Texas and Louisiana over a period of many years and the Special Master was in error in holding that a mid-stream boundary was established by acquiescence.

POINT "D"

The Special Master was correct in finding that Louisiana owned all of the islands in the Sabine in 1812, but the Special Master was in error in holding that Louisiana does not own all of the islands in the Sabine formed since that date. Once Louisiana's boundary was established in the channel of the Sabine west of the most westerly islands, this boundary was not lost by the erosion of the islands either by natural or artificial means. There was nothing in the act of admission of Louisiana, or Louisiana's Constitution, limiting the islands to those in existence in 1812. There was no mention of any islands in the Acts of the Texas legislature of 1849 or in the Act of Congress of July 5, 1848, which are relied on by Texas. Louisiana did not lose the islands to which it had title by erosion or by acquiescence.

ARGUMENT**POINT "A"**

THE SPECIAL MASTER WAS IN ERROR IN HOLDING THAT TEXAS LEGALLY EXTENDED ITS BOUNDARY ON THE WEST BANK OF THE SABINE TO THE GEOGRAPHICAL MIDDLE OF THE SABINE FROM THE GULF OF MEXICO TO THE 32° OF NORTH LATITUDE BY ACT OF THE TEXAS LEGISLATURE OF NOVEMBER 24, 1849 (3 GAMMEL'S LAWS OF TEXAS 442) SO AS TO ACQUIRE TITLE TO THE BED AND SUBSOIL OF THAT PORTION OF THE SABINE, FOR LOUISIANA OWNED THE BED AND SUBSOIL OF THE

SABINE TO ITS WEST BANK, AS SURVEYED AND STAKED IN 1839-1841.⁸

It is evident from the facts, and was so found by the Special Master, that when the Republic of Texas entered the Union in 1845 as a state its boundary was on the west bank of the Sabine as established by the treaties between the United States and Spain in 1819,⁹ between the United States and Mexico in 1828,¹⁰ and between the United States and the Republic of Texas in 1838,¹¹ and which was surveyed and staked in 1839-1841 by a Joint Commission appointed by the United States and the Republic of Texas.¹²

In its brief filed with the Special Master, in support of motion for judgment, Texas stated:

"This suit was instituted by the State of Texas for the purpose of establishing its rights as against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River from the mouth of the River on the Gulf of Mexico to the 32nd degree of north latitude, and for a decree confirming the boundary of the two States in the middle of said stream."¹³

Texas and Louisiana entered into a stipulation in this suit recognizing between themselves the landed portion of the boundary, namely:

"The eastern boundary of the State of Texas

⁸ Pages 20-26, Report of Special Master.

⁹ 8 U.S. Stat. 252.

¹⁰ 8 U.S. Stat. 372.

¹¹ 8 U.S. Stat. 511.

¹² Louisiana Exhibits A (Item 13), and F (Items 2 and 3)

¹³ Page 3, Brief for the State of Texas in Support of Motion for Judgment.

between the 32nd and 33rd degrees of north latitude is a line marked on the ground in 1840-1841 by Commissioners appointed by the United States and the Republic of Texas from the junction of the west bank of the Sabine River with the 32nd degree of north latitude, thence north to the 33rd degree of north latitude, being the same line fixed by the Treaties between the United States and Spain in 1819, between the United States and Mexico in 1828, and between the United States and the Republic of Texas in 1838. This line has remained the same since it was so marked on the ground.”¹⁴

The stipulation also provides:

“That the Sabine River, Sabine Lake, and Sabine Pass are in fact navigable streams for the entire distance between the Gulf of Mexico and the 32nd degree of north latitude and were navigable in fact, carrying river boat transportation, in 1812, 1819, 1849 and during all other years since 1812.”¹⁵

Interestingly, Texas, at one time, did assert a claim to the landed portion of the boundary between the 32° and 33° north latitude to the line stated in the 1812 Constitution of Louisiana. Bascom Giles, Commissioner of the General Land Office for Texas, wrote Honorable Sam H. Jones, Governor of the State of Louisiana, to this effect on November 25, 1941.¹⁶

¹⁴ Pre-Trial Order and Stipulation dated September, 1970, particularly stipulation 3(b).

¹⁵ Pre-Trial Order and Stipulation dated September, 1970, particularly stipulation 3(a).

¹⁶ Louisiana Exhibit B, Item 1, particularly pp. 5-8; also Appendix “A”, Item 2.

Texas now recognizes the boundary as surveyed and staked in 1839-41 from the 32° of north latitude to the 33° of north latitude, the northwest corner of Louisiana. In this litigation, Texas is attempting to establish its boundary to the geographic middle of the Sabine, commencing at the Gulf of Mexico and extending to the 32° of north latitude. The lateral boundary between Texas and Louisiana in the Gulf of Mexico does not form part of this litigation, and still remains in dispute.¹⁷

On what basis does Texas claim a mid-stream boundary in the Sabine when its boundary, on its admission into the Union, was on the west bank of the Sabine?

Texas is basing its claim on an Act of Congress of July 5, 1848¹⁸ and an Act of the Legislature of the State of Texas on November 24, 1849.¹⁹

What was Louisiana's boundary when this purported extension was made in 1848? Louisiana's western boundary was on the west bank of the Sabine, as surveyed and staked in 1839-1841 and coincided with the boundary of Texas when it was admitted into the Union as a state in 1845.

Even though Louisiana was admitted into the Union as a state in 1812, its western boundary was

¹⁷ Texas excluded from this suit the lateral boundary between Texas and Louisiana in the Gulf of Mexico. Now that the Special Master has filed his report Texas officials are publicly asserting the extension of the midstream boundary into the Gulf of Mexico. Appendix "A", Item 4.

¹⁸ 9 U.S. Stat. 245.

¹⁹ 3 Gammel's Laws of Texas 442.

not finally established until the United States entered into the Treaty of Limits with Spain in 1819, which was proclaimed on February 21, 1821.²⁰ The Treaty, in part, provided:

"The boundary line between the two countries west of the Mississippi shall begin on the Gulph of Mexico, at the mouth of the river Sabine in the sea, continuing north along the western bank of that river, to the 32d degree of Latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo of Natchitoches, or Red River . . ."

Louisiana's position that this Treaty established its western boundary is not without precedent. It was recognized by the Congress of the United States, when Louisiana was admitted into the Union, that its western boundary was to be settled by a Treaty between the United States and Spain. There were two other instances mentioned in Congress at that time where the boundary between a state and a foreign nation was in dispute and the settlement of the boundary between the United States and a foreign nation became the boundary of the state without any further action on the part of Congress or the state.

The first instance involved Massachusetts and a treaty between England and the United States and the other involved Georgia and a treaty between Spain, the United States and England. In discussing these instances Congressman Poindexter had this to say:

"It has been contended by an honorable gen-

²⁰ 8 U.S. Stat. 252; Louisiana Exhibit A, Item 7.

tleman from Connecticut, (Mr. Pitkin) that inasmuch as the western limits of Louisiana remain undefined, the State to be formed of the present Territory of Orleans would extend its jurisdiction over the province of Texas to Rio Bravo, and down that river to its confluence with the sea, so as to include the Bay of St. Bernard, and the whole extent of country, supposed by the American Government to be transferred by the French Republic under the name of Louisiana. This circumstance, it is alleged, will enable the Government of the new State to involve the United States in war, for the establishment of the most western boundary, to which we have asserted a claim. The gentleman has himself referred to a fact which, in my estimation, furnishes a sufficient answer to this objection. He admits that the northern boundary of the State of Massachusetts was never definitely established until commissioners were appointed by the Government of Great Britain and the United States, to ascertain what was the true river St. Croix. Anterior to that event it was uncertain how far north the jurisdiction of Massachusetts extended; but the most scrupulous advocates for State sovereignty never imagined that the State could decide its own boundaries, and call upon the general Government to support that decision at the point of the bayonet. The difficulty was adjusted by amicable negotiation, and the river designated by the two nations became the permanent boundary of the State. Can the gentleman distinguish that case from the one which exists as to the western boundary of Louisiana? By the second section of the bill, it is provided, that the State shall be composed of all that part of the ter-

ritory or country ceded under the name of Louisiana by the treaty made at Paris on the 3rd day of April, 1803, between the United States and France, 'now contained within the limits of the Territory of Orleans, except that part lying west of the river Iberville, and a line to be drawn along the middle of the lakes Maurepas and Ponchartrain to the ocean.' *The Territory of Orleans is limited indefinitely by the western boundary of Louisiana; but by an arrangement made in the Autumn of 1806, between the Commander-in-Chief of the American Army and the Commander of the Spanish forces in that quarter it was agreed that for the present the Spanish should not cross the Sabine, and that the American settlements should not extend to the river. To carry this arrangement into effect, the Government of the United States has given instructions that the public lands should not be disposed of west of a meridian passing by Natchitoches. Beyond that line I am inclined to believe the Territorial Government of Orleans has not yet extended its authority.* It follows, therefore, by a fair construction of the section to which I have referred, that the State to be formed of that territory will be confined within the same limits, until by an act of the General Government the western boundary of the cession shall be finally adjusted. It belongs exclusively to the high contracting parties, to render that certain, which by the deed of cession is equivocal, and whatever line they may consent to establish as the western extremity of the country ceded under the name of Louisiana will constitute the permanent limit of the State, whether it extends to Rio Bravo or the Sabine, or a meridian passing by Natchitoches. This, sir, is conformable with usage. The

southern boundary of Georgia was fixed by the Treaty of the 27th day of October, 1795, with the King of Spain; and, by the Treaty of 1794 with Great Britain, the true river St. Croix was determined. In these instance, the States whose interests were involved, existed prior to, and were parties in, the adoption of the Federal Constitution; and yet no one ever questioned the right of the Government of the United States to settle the line of demarcation between them and the colonies of Great Britain and Spain. I put it to the candor of the gentleman from Connecticut to say whether the difficulty which he suggests, is not entirely removed by a reference to the practice of the Government on these occasions, similar in their nature to the present, and differing only in circumstances which rendered them more favorable to the interposition of State authorities.'” (Emphasis ours.)²¹

This discussion is very pertinent to Louisiana's claim for it must be remembered that when the United States acquired the Louisiana Purchase from France in 1803,²² the western extent of the Louisiana Purchase was not fixed and was generally thought to include the Mississippi watershed, although there were claims by the United States to a much more westerly boundary.²³

In 1804 the Louisiana Purchase was divided into the Territory of Orleans,²⁴ which extended from the 33° of north latitude south and the Louisiana Terri-

²¹ Louisiana Exhibit A, Item 5, particularly page 57.

²² 8 U.S. Stat. 200.

²³ Louisiana Exhibit A, Item 2 [Bond, “Historical Sketch of Louisiana and the Louisiana Purchase” (1933)].

²⁴ U.S. Stat. 283.

tory extending from the 33° of north latitude north. During this period of time there was considerable agitation between the United States and Spain around the Sabine. Spain and the United States, recognizing that the boundary was in dispute, entered into an agreement in 1806. The United States, represented by General Wilkinson, and Spain represented by Lt. Col. Herrera, created a neutral zone.

According to House of Representatives, Document 190, 25th Congress, Second Session,²⁵ the neutral zone consisted of an area bounded by the Sabine on the west to the 32nd parallel, thence a straight line north to the Red River as the west boundary; the Red River as the northern boundary; a straight line running from the Red River in a southeasterly direction to intersect the Mermentau River a few miles from its mouth, thence the Mermentau to the Gulf of Mexico, as the eastern boundary; and the Gulf of Mexico as the southern boundary, as more vividly shown by the following map.²⁶

This neutral zone purported to encompass the western claim of the United States and the eastern claim of Spain. This agreement was still in effect when Louisiana was admitted into the Union in 1812. This fact was noted by Mr. Poindexter in his discussion in Congress on the admission of Louisiana. The neutral zone was not settled until the Treaty of Amity of 1819.

When Louisiana entered the Union all unappro-

²⁵ Louisiana Exhibit A, Item 12.

²⁶ Louisiana Exhibit A, Item 12, p. 99.

priated lands vested in the United States, except the beds of navigable streams.²⁷ The United States, recognizing the limits imposed on it by the agreement of 1806, did not patent any lands in the neutral zone until after the Treaty of Amity in 1819. As a matter of fact, a Commission was appointed in 1821 to consider the lands formerly in the neutral zone.²⁸

During the negotiations of the Treaty of 1819, the United States was represented by Secretary of State, John Quincy Adams, and Spain was represented by Count de Onis. The dispute not only concerned the boundary between the United States and Spain from the Gulf to the 33° of north latitude, but extended to the west coast and involved lands in Florida. Count de Onis urged that the boundary be established along the Mermentau River, while Adams urged that the boundary be established west of the Sabine. During the negotiations, Adams suggested, at one point, that the boundary be established along the east shore of the Sabine. He then urged that it be established in the middle of the Sabine and finally it was agreed that the boundary be established commencing at the Gulf on the west bank of the Sabine to the 32° of north latitude.²⁹ It must be remembered that *during these negotiations Louisiana had already been admitted as a*

²⁷ Louisiana Exhibit A, Item 6 (2 U.S. Stat. 641).

²⁸ Louisiana Exhibit C, Item 3 (Document No. 445, 18th Congress, 2d Session), particularly pp. 135-137.

²⁹ (1) Louisiana Exhibit C, Item 2 (Haggard, "The Neutral Ground Between Louisiana and Texas, 1806-1821," *The Louisiana Historical Quarterly*, Vol. 28, No. 4, October, 1945). (2) *United States v. State of Texas*, 162 U.S. 1, 16 S.Ct. 725, 40 L.Ed. 867 (1896).

state. If the boundary had been established at the Mermentau River, as urged by de Onis on behalf of Spain, that would have become the western boundary of Louisiana even though the Constitution of Louisiana of 1812 called for a boundary "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude . . ."³⁰ If the boundary had been established on the east side of the Sabine, as one time suggested by Mr. Adams, that would have been the western boundary of Louisiana. Clearly, when the boundary was finally settled, Louisiana being the westernmost state, had its boundary established by that treaty. This was not a question of Louisiana acquiring title to additional land as found by the Special Master.³¹ Louisiana was having its boundary established by the only authority that could establish its boundary with a foreign government.³²

The Court of Civil Appeals of Texas in the case of *Fragoso v. Cisneros*, 154 S.W.2d 991 (1941) took this exact same position as to Texas' boundary on the Rio Grande. The court in that case had for consideration the question of whether treaties between the U.S. and Mexico, settling the boundary along the Rio Grande, established the boundary of Texas with Mexico as it affected certain lands without any additional action on the part of Texas and the United States. The question

³⁰ West's Louisiana Statutes Annotated, Constitution, Volume 3, p. 511.

³¹ Pages 20-26, Report of Special Master.

³² *State of Rhode Island v. Commonwealth of Massachusetts*, 37 U.S. 657 12 Peters 657, 9 L.Ed. 1233, 1260-1 (1838); Article I, Section 10, U.S. Constitution.

was when the disputed land became part of Texas and the Court said, after discussing the various treaties:

"... in the adjustment of the boundary line by the Treaty of 1905, in our opinion the United States adjusted the boundary line of Texas as to the Republic of Mexico. This, we believe, from the moment of the effective date of the treaty constituted the eliminated bancos a part of Texas and that the territory was subject to both the civil and criminal laws of Texas. This is the common sense, practical construction. The United States had not the facilities to administer local government within the limited areas affected, the State of Texas did. The boundary fixed was the boundary of Texas as to Mexico, and her boundary as a member of the Union. Jurisdiction over the eliminated bancos was the right and duty of Texas from the moment of their elimination. This, in our opinion, accords with the obligations of the United States under the treaty. If the United States should acquire new citizens, by what courts could their rights be protected? If the election was otherwise, what court could protect the property rights of Mexican citizens?"

We are not here dealing with a question of Congress transferring the west half of the Sabine to Louisiana under Article 4, Section 3 of the United States Constitution, as the Special Master found in his report."

The fact that the western boundary of Louisiana was established by the Treaty of Amity of 1819, and confirmed by the Treaty of Limits in 1828, is estab-

²² Page 26, Report of Special Master.

lished by the statements of Henry Clay, as Secretary of State, in 1828, and John Quincy Adams, as President in 1828.³⁴ Both were thoroughly familiar with the admission of Louisiana into the Union, as Mr. Clay was in Congress at that time. Mr. Adams was thoroughly familiar with the Treaty of Amity of 1819 fixing the boundary between Spain and the United States in 1819 as he negotiated the treaty as the representative of the United States.

When Mexico seceded from Spain, the United States and Mexico entered into negotiations to reaffirm the Treaty of Amity of 1819. Congress was interested in the progress of this treaty and Mr. Clay, as Secretary of State, wrote a letter to Mr. Adams on January 14, 1928, in which he stated:

"That the Minister of the United States at Mexico, when he was sent on his mission, was charged with a negotiation relating to the territorial boundary between that Republic and the United States in its whole extent; and, consequently, including that portion which divides Louisiana from the Province of Texas; but no definitive arrangement on that subject has been yet concluded; and it is respectfully submitted to the President, that, in the present stage of the negotiation, it would be premature to publish the correspondence that has passed between the two Governments."

All which is respectfull[y] reported.

H. Clay."³⁵

In transmitting this letter to Congress, President

³⁴ Louisiana Exhibit A, Items 8 and 9; Appendix "A", Item 3.

³⁵ Louisiana Exhibit A, Item 9, p. 93; Appendix "A", Item 3.

John Quincy Adams addressed a memorandum to the House of Representatives of the United States, dated January 15, 1828, in which he stated:

"In complizance with a resolution of the House of Representatives, of the 2d instant, requesting information respecting the recovery of debts and property in the Mexican States, from persons absconding from the United States; and, also, *respecting the boundary between the State of Louisiana and the Province of Texas*, I now transmit a report from the Secretary of State on the subject matter of the resolution.

JOHN QUINCY ADAMS."
(Emphasis Ours)³⁰

It is apparent from this correspondence, that both Clay and Adams considered that the Treaty of Amity of 1819 fixed the boundary between Louisiana, the westernmost state of the United States from the Gulf to the 33° of North latitude, and the Province of Texas.

In the Treaty of Limits of 1828 between the United States and the United Mexican States,³¹ it was stated:

"ARTICLE FIRST.

The dividing limits of the respective bordering

³⁰ Louisiana Exhibit A, Item 8, p. 92; Appendix "A", Item 3; the interpretation of a treaty by the executive branch is entitled to great weight in evaluating the impact of the treaty and this Court, in constraining treaties such as involved in this matter may look to negotiations, diplomatic correspondence, etc. *Factor v. Laubenheimer*, 290 U.S. 276, 54 S.Ct. 191, 78 L.Ed. 315 (1933); *Kolovrat v. Oregon*, 366 U.S. 187, 81 S.Ct. 922, 6 L.Ed. 2d 218 (1961); and *Shaffer v. United States*, 278 F. Supp. 152 (S.D.N.Y., 1967), *aff'd* 400 F. 2d 584 (2d Cir., 1968).

³¹ Louisiana Exhibit A, Item 10 (8 U.S. Stat. 372)

territories of the United States of America and of the United Mexican States, being the same as were agreed and fixed upon by the above mentioned Treaty" (Treaty of 1819).

This phrase indicates that the parties recognized that they were settling the boundary between the bordering territories of the United States (being the State of Louisiana) and the bordering territories of Mexico (being the Province of Texas).

This Court, in the case of *United States vs. State of Texas*, 162 U.S. 1, 16 S.Ct. 725, 40 L.Ed. 867 (1896), speaking through Justice Harlan, in discussing the diplomatic correspondence leading up to the same Treaty of 1819, had this to say:

"Before examining those articles, it will be useful to refer to the diplomatic correspondence that preceded the making of the treaty. That correspondence commenced during the administration of President Madison, and was concluded under that of President Monroe. It appears that the negotiations upon the subject of the boundaries between the *respective possessions of the two countries* was more than once suspended because certain demands on the part of Spain were regarded by the United States as wholly inadmissible. 4 Am. St. P. 'Foreign Relations,' pp. 425, 430, 438, 439, 452, 464-466, 478." (Emphasis ours)**

Judge Harlan, speaking for the Court, considered that the Treaty under discussion was to settle "the boundary between the *respective possessions of the two countries*". This meant, as to the portion of the bound-

** This case involved a portion of the boundary of Texas along the Red River which was fixed by the Treaty of 1819 on the south bank of the Red River.

ary from the Gulf of Mexico to the 33°, the settlement was between the Province of Texas, a territory of Mexico, and the State of Louisiana, the most western territory of the United States between those points.

The boundary established in the Treaty of Amity of 1819 was finally surveyed and staked in 1839-1841 by a commission appointed by the Republic of Texas and the United States, of which Mr. Overton was chairman. On August 10, 1841, Mr. Overton wrote to Mr. Webster, who, at that time, was Secretary of State, stating:

“Although about half of the western range of sections in the 16th range of townships, and the entire seventeenth range of townships in the State of Louisiana, have fallen by the determination of the boundary, within the limits of the republic of Texas, yet, the interest of the settler with a few exceptions, have not been prejudiced. The fostering policy of the neighboring Government, had in anticipation of such a result, liberally provided for, by donations of land to, the actual settler and cultivator. The exceptions alluded to are not numerous. They are those claiming under purchase from the United States, whose improvements have been severed by the course of the line, thereby rendering measureably valueless the portion left them. The reimbursement of the purchase money, as in ordinary cases would not, I am induced to believe, indemnify them for the loss they have sustained, and I therefore, at their earnest solicitation, beg leave through your Department to present to the President the consideration of their cases.”

This clearly indicated that after the survey some of the territory formerly surveyed as being in Louisiana fell in the Republic of Texas and it was necessary to adjust the townships along the west boundary of Louisiana so as to comply with the survey of 1838-1841.³⁹

With reference to the resurvey of these townships, George W. Moss, U. S. Surveyor General for Louisiana, wrote to the Register of the State Land Office of Louisiana at Natchitoches, Louisiana, stating:

"Herewith you will receive 12 diagrams from T 12 to 23 inclusive of R. 16 W showing the conversion of *the boundary line between the States of Louisiana and Texas* with the public survey.

Also Township map of T 16 N R 13 W which please acknowledge" (Emphasis Ours)

The *new* township plats show the boundary of Louisiana to coincide with its boundary located by the survey undertaken by the Commission in 1839-1841.⁴⁰

³⁹ Some of the territory thought to belong to Louisiana fell to the Republic of Texas. This was made up to some extent by Louisiana's boundary being established on the west bank of the Sabine. This is similar to the situation discussed by the Court of Civil Appeals of Texas in the case of *Fragoso v. Cisneros*, supra., for the Court said: "These minor adjustments changed the boundary line of the State of Texas in a certain sense, changed it in that it took property away from the State that had formerly been subject to her jurisdiction. *Equitably at least Texas was entitled to the gaining of territory which was occasioned by this loss of territory.*" (Emphasis Ours).

⁴⁰ In the report of E. W. Foster, Surveyor General of Louisiana, to the Commissioner of the General Land Office, Washington, D.C., dated August 30, 1873, it is stated "until the Treaty of 1819, no definite line had been agreed upon as the boundary between the United States, and the Spanish Province of Mexico; but, by this Treaty, the strip of country known at that time as 'neutral territory' lying between the Sabine

The map of the survey of 1840⁴¹ shows that the Commissioners for the Republic of Texas and of the United States considered the western boundary of Louisiana as coinciding with the boundary between Texas and the United States. *The map prepared in conjunction with the Commission report consistently refers to the State of Louisiana and makes no mention or note of ownership by the United States of the west half of the Sabine.*

President Tyler in his annual address to Congress in 1841 had this to say:

"The joint commission under the convention with Texas to ascertain the true boundary between the two countries has concluded its labors, but the final report of the commissioner of the United States has not been received. It is understood, however, that the meridian line as traced by the commission lies somewhat farther east than the position hitherto generally assigned to it, and consequently includes in Texas some part of the territory which had been considered *as belonging to the States of Louisiana and Arkansas.*" (Emphasis ours.)⁴²

President Tyler was referring to the letter written by Mr. Overton, the Chairman of the Joint Commis-

River and Red River, nearly as far down as Natchitoches, and the Rio Hondo and Calcasieu Rivers to the Gulf, *was admitted to be a part of Louisiana.*" (Emphasis Ours) This is evidence that Louisiana's boundary was established by the Treaty of 1819 and it was so believed in 1873 or twenty-five (25) years after Texas was allowed to extend its "jurisdiction" to the middle of the Sabine. Louisiana Exhibit G.

⁴¹ Louisiana Exhibit K, Item 1—Appendix "A", Item 5.

⁴² Louisiana Exhibit A, Item 15, pp. 256-275 and, particularly, p. 262.

sion, to Secretary of State Webster, to which we have previously referred. Nowhere is it asserted that the United States owned any part of this border land.

Louisiana adopted a new Constitution in 1845, after the survey of the Joint Commission of 1839-1841. The preamble to the new Constitution of Louisiana *did not* carry a description of the boundaries of Louisiana. This has been true in all subsequent Constitutions adopted by Louisiana.⁴³

Texas officials must have thought the Treaty of 1819 settled its eastern boundary to coincide with the western boundary of Louisiana at least up to 1896.⁴⁴

The legislators of Louisiana, during this time, were of the firm belief that Louisiana had received the benefit of the Treaty of 1819, as the western boundaries of several parishes were extended or fixed accordingly.

On January 18, 1838, an Act was approved to create and establish the Parish of Caddo⁴⁵ and the description contained therein of said parish reads, in part, as follows:

"... thence by a due south line until it intersects a direct line running from said western bank of Bayou Pierre Lake to the Sabine River, where the line between Townships nine and ten strikes the same, *thence pursuing the boundary line of the*

⁴³ West's Louisiana Statutes Annotated, Constitution, Vol. 3, pp. 485-903, but particularly pp. 511, 524, 544, 564, 565, 587, 611, 666, and 763.

⁴⁴ Louisiana Exhibit F, Item 1.

⁴⁵ Louisiana Exhibit A, Item 16.

United States to Red River and down the same to the point of beginning . . ." (Emphasis Ours) ~

Act No. 46 of 1843 created the Parish of Sabine⁴⁶ and the description contained in that Act reads, in part, as follows:

" . . . thence westwardly on said line to the western bank of the Sabine River; thence Southerly, following the line between the United States and the Republic of Texas . . ." (Emphasis Ours)

DeSoto Parish was also created in 1843 by the Louisiana Legislature⁴⁷ and the description of that parish reads, in part, as follows:

" . . . thence due West along said section line to the line between the United States and the Republic of Texas; thence due south along said line to the Sabine River . . ." (Emphasis Ours)

It is obvious that it was the impression of the legislators of Louisiana, *subsequent to the Treaty of 1819*, that the boundary of "Louisiana" was identical to the boundary of the "United States", as provided for in the Treaty of 1819.

Other acts of the Louisiana Legislature asserting ownership of the Sabine River to its west bank were: Act No. 83 of 1845⁴⁸ which authorized the Governor of Louisiana to appoint pilots for the Sabine River, with no limitation noted therein as to the limits of their authority on the Sabine; Act No. 141 of 1842 granted to Thomas W. Reed the exclusive privilege of keeping a

⁴⁶ Louisiana Exhibit A, Item 18.

⁴⁷ Louisiana Exhibit A, Item 17.

⁴⁸ Louisiana Exhibit H, Item 2.

ferry across Sabine River; Act No. 19 of 1843,⁴⁹ which was prior to Texas' admission into the Union, granted Thomas G. S. Godwin and William Godwin the privilege of keeping a ferry across the Sabine River and asserted therein that they, their heirs and assigns, "shall be bound . . . to keep and maintain . . . the banks on each side of said River . . .". It was further stated therein "that similar privileges and conditions, in all respects, be and the same are hereby granted to Green Berry Cook, to keep a ferry over the same River, in the Parish of Natchitoches, at the point on said River opposite the Town of Sabine, in Texas."

We respectfully urge Louisiana's boundary was on the west bank of the Sabine from the Gulf of Mexico to 32° north latitude when Texas was admitted as a state in 1845.

The United States Congress could not change the boundary of Louisiana after it was established by the Treaty of 1819 and transfer property belonging to Louisiana to Texas.⁵⁰ The Special Master was in error in holding that the Congress of the United States, by act of 1848, transferred title to Texas, to the bed and subsoil of the west half of the Sabine from the Gulf of Mexico to the 32° of north latitude.⁵¹ This holding by the Special Master would make the Act of 1848 unconstitutional.⁵² We will discuss this Act and the Acts of

⁴⁹ Louisiana Exhibit H, Item 9, pp. 28-31.

⁵⁰ Article IV, Sec. 3, U. S. Constitution.

⁵¹ Pages 20-26, Report of Special Master.

⁵² Louisiana maintains that the Act of 1848 only authorized Texas to extend criminal jurisdiction to the middle of the Sabine so that Texas and Louisiana could enforce their

the Texas Legislature of 1848-1849 in more detail under the section of this brief dealing with acquiescence and prescription.

POINT "B"

LOUISIANA HAS NOT LOST TITLE TO THE BED AND SUBSOIL OF THE WEST HALF OF THE SABINE FROM THE GULF OF MEXICO TO 32° NORTH LATITUDE BY ACQUIESCENCE AND PRESCRIPTION AS FOUND BY THE SPECIAL MASTER.

This Court, at an early date, established rules by which a boundary, between two states, could be established by acquiescence and prescription. In the case of *State of Virginia v. State of Tennessee*, 148 U.S. 503, 13 S.Ct. 728, 37 L.Ed. 537 (1893), this Court said:

"Independently of any effect due to the compact as such a boundary line between the states or provinces, as between private persons, which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by the parties for a long course of years, is conclusive, even if it be ascertained that it varies somewhat from the courses given in the original grant; and the line so established takes effect, not as an alienation of territory, but as a definition of the true and ancient boundary. Lord Hardwicke, in *Penn v. Lord Baltimore*, 1 Ves. Sr. 444, 448; *Boyd v. Graves*, 4 Wheat, 513; *Rhode Island v. Mas-*

criminal jurisdiction over the whole of the Sabine in view of the "use" thereof by the inhabitants of both States, but that it did not change Louisiana's boundary so as to divest it of bed and subsoil of the west half of the Sabine.

sachusetts, 12 Pet. 657, 734; U. S. v. Stone, 2 Wall, 525, 537; Kellog v. Smith, 7 Cush. 375, 382; Chenery v. Waltham, 8 Cush. 327; Hunt, Bound. (3d Ed.) 306."

This same principle is stated in 49 American Jurisprudence 239, Section 19, which reads:

"A boundary line between states which has been run out, located, and marked, and which thereafter has been recognized and acquiesced in by the states in question for a long course of years, is conclusive, even though it is later ascertained that the line thus located and marked varies somewhat from the courses given in the original plat. In other words, states are bound by the practical lines that have been recognized and adopted as their boundaries."

The report of the Special Master will demonstrate without any contradiction that we are not here dealing with a landed boundary "which has been run out, located, and marked upon the earth, and afterwards recognized and acquiesced in by parties for a long course of years". The Special Master erred in applying the principles established by this Court, enunciated above for establishing a land boundary, to establish a water boundary by acquiescence and prescription.

Louisiana was the most westerly territory of the United States from the Gulf of Mexico to the 33° of north latitude from 1812 until Texas was admitted as a state in 1845.

The area of Louisiana adjacent to the Sabine, which was part of the neutral zone, was sparsely in-

habited and a wild country even at the time the survey was made in 1839-41.⁵³

Since the inhabitants of Texas had the "use and navigation" of the Sabine, there arose some question as to whether Louisiana had criminal jurisdiction over the whole of the Sabine, even though its boundary was on the west bank.

The Special Master fell in error in not giving proper consideration to this unusual treaty provision giving the "use of the water" to the inhabitants of Texas and Louisiana. This phrase distinguishes this case from those relied on by the Special Master to sustain his finding that Louisiana lost the west half of the Sabine by acquiescence and prescription.⁵⁴

This provision in the Treaty of 1819 provides

"... but the *use* of the waters, and navigation of the Sabine to the sea, and of the said rivers Rio Roxo and Arkansas throughout the extent of the said boundary on their respective banks shall be common to the respective inhabitants of both nations." (Emphasis Ours)⁵⁵

⁵³ Louisiana Exhibit A, Item 14 (Senate Document 199 of the 27th Congress, 2nd Session, which is a copy of the proceeding of the Joint Commission).

⁵⁴ Letter from Mr. Forsyth to Mr. Overton, dated April 8, 1840 (p. 173 of Louisiana Exhibit A); copy of letter from Mr. Memucan Hunt to Mr. John H. Overton, dated February 29, 1840 (p. 186 of Louisiana Exhibit A); copy of letter from Mr. Overton to Mr. Hunt dated February 29, 1840 (p. 186 of Louisiana Exhibit A); copy of letter from Mr. Hunt to Mr. Overton dated March 2, 1840 (p. 187 of Louisiana Exhibit A); and copy of letter from Mr. Overton to Mr. Hunt dated March 5, 1840 (p. 192 of Louisiana Exhibit A); Senate Document 199 of the 27th Congress, 2nd Session, which is a copy of the proceeding of the Joint Commission, (Louisiana Exhibit A, Item 14).

⁵⁵ For a very enlightening discussion of the diplomatic correspondence surrounding the Treaty of 1819 we particu-

This language was reaffirmed in the Treaty of Limits of 1828 and the Treaty between the United States and the Republic of Texas in 1838. The Court will note that the "use" and "navigation" of the Sabine to the sea throughout the extent of the said boundary on their respective banks shall be common to the respective inhabitants of both nations. This means that the inhabitants of Texas have equal use and navigation of the water of the Sabine. The inhabitants of both Texas and Louisiana have the right to use their respective banks of the Sabine in the use and navigation of these waters. Louisiana had no right to construct structures in the Sabine that would in any way interfere with the full use and navigation of the waters by the inhabitants of Texas over the objection of Texas. This same restriction would apply to the inhabitants of Texas if Louisiana objected. This joint use accounted for the fact that Louisiana recognized there was a question about it having full criminal jurisdiction over the full extent of the waters of the Sabine.

On March 16, 1848, the legislature of Louisiana, recognizing its boundary on the west side of the Sabine, sought to extend its criminal jurisdiction to the west bank of the Sabine River to remove this jurisdictional uncertainty, and passed an Act making such extension, if Congress gave permission.⁵⁶ The body of the Resolution reads as follows:

larly call the Court's attention to the opinion of Judge Harlan in the case of *United States v. State of Texas*, 162 U.S. 1, 16 S.Ct. 725, 726, 40 L.Ed. 867 (1896).

⁵⁶ Louisiana recognized it could not effect treaty rights of the inhabitants of Texas without Congressional approval.

"Therefore, be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: first, That the Constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto), viz.: Between the middle of the Sabine river and the western banks thereof, to begin at the mouth of said river, where it empties into the Gulf of Mexico, and thence to continue along the *said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the State of Texas.*" (Emphasis Ours).⁵⁷

We are reinforced in our position by the fact that it is patent on the face of the 1848 acts, respectively, of Congress, Texas and Louisiana that all the parties had in mind was criminal jurisdiction, not fee simple ownership.

On March 18th, 1848 the Texas Legislature resolved to petition its representatives in Congress to "extend the jurisdiction" of Texas over the west half of the Sabine.

In the report of Senate action on the Texas resolution of March 18, 1848 (Congressional Globe, 1st. Sess., 30th Congress, June 29, 1848), the Chairman of the Judiciary Committee urged the passage of an Act of Congress extending the eastern boundary of

⁵⁷ Louisiana Exhibit A, Item 19 (Resolution No. 212 of the Louisiana Legislature of 1848).

Texas to the middle of the Sabine. The following appears:

"The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas, for the purpose of enabling the latter to extend her *criminal jurisdiction to the Louisiana boundary*. There could be no objection to the bill, and he hoped it would now be passed." (Emphasis ours).⁵⁸

The act of the Texas Legislature dated November 24, 1849, accepting the extension mentioned above states that the several counties of Texas from the mouth of the Sabine to the 32nd degree of north latitude "shall have and exercise *jurisdiction* over such portions of the western half of said Pass, Lake and River as are opposite to said counties respectively;" (Emphasis Ours).

We have already quoted from the resolution of the Louisiana Legislature adopted on March 16, 1848 from which there can be no doubt that the sole objective thereof was to cure the existing hiatus in the criminal jurisdiction. As stated above, the resolution specifically declares that the western bank of the Sabine is "the boundary line between the State of Louisiana and the State of Texas."⁵⁹

⁵⁸ U. S. Senators Johnson and Downs of Louisiana acquiesced in the passage of the act extending Texas' criminal jurisdiction. These senators could not agree to a change of Louisiana's boundary or the giving up of Louisiana territory without the consent of the Legislature of Louisiana, which had just declared that Louisiana's boundary was on the west bank of the Sabine by Resolution No. 212. Louisiana Exhibit A, Item 19; Appendix "A", Item 1.

⁵⁹ These actions of Congress, the Texas Legislature, and

The fact of a state owning the bed and subsoil of a navigable stream, where there is some question of jurisdiction over the whole stream is not unusual. This same situation existed in the case of *State of Washington vs. The State of Oregon*, 214 U.S. 205, 29 S.Ct. 631, 53 L.Ed. 969 (1909).

This Court held that the granting of *jurisdiction* did not determine the boundary between two states, and in this connection said:

"It must be borne in mind that an inquiry of this kind is attended with much difficulty. Here is a river of great width, 3 miles or so at certain places, whose bed is largely of sand, and whose channels have been naturally affected by the flow of the water, and also of late years by the jetties constructed by the government in order to facilitate navigation. Congress, evidently recognizing the difficulty which attended the location of the exact boundaries, provided that the states of Washington and Oregon should have concurrent 'jurisdiction in civil and criminal cases upon the Columbia river.' *Yet this provision does not determine the boundaries between the two states, and has proved insufficient to settle the disputes between them as to things done upon the Columbia river.* Nielson v. Oregon, 212 U. S. 315, 53 L. ed. —, 29 Sup. Ct. Rep. 383." (Emphasis Ours)

the Louisiana Legislature were in the nature of a compact to establish jurisdiction over the Sabine to regulate the "use" of the water by the inhabitants of both States without having the effect of changing Louisiana's boundary. These acts are similar to some extent to those acts by Louisiana, the U.S. Congress, and Texas in forming a compact to develop the Toledo Bend Project. Louisiana Exhibit A, Item 23.

The Special Master was in error when he adopted the argument of Texas, "Thus, it would appear that the United States was holding the western half of the Sabine as a territory of its own, to be given to Texas should it become a part of the United States." ⁶⁰

This is similar to the position taken by Texas in its litigation with the United States and Oklahoma over its boundary along the Red River.⁶¹ This Court held in that litigation that the Treaty of 1819, being the same treaty involved in this case, fixed the boundary of Texas along the south bank of the Red River and that Oklahoma's boundary extended to the south bank of the Red River. This Court said:

"In the early stages of the suit the chief point of difference between the parties was that Oklahoma and the United States were claiming the south bank of the river as the boundary, while Texas was contending for the *thread or middle of the stream*. That difference was disposed of in an opinion delivered April 11, 1921, wherein this court recognized that in the earlier case of *United States v. Texas*, 162 U.S. 1, 16 Sup. Ct. 725, 40 L.Ed. 867, it had been adjudged that the boundary, as fixed by the treaty, is along the south bank. 256 U.S. 70, 41 Sup. Ct. 420, 65 L.Ed. 831. The purport of that opinion was embodied in an interlocutory decree of June 1, 1921, which also made provision for taking additional evidence and for a further hearing to determine what constitutes the south bank, where along that

⁶⁰ Page 22, Report of Special Master.

⁶¹ *State of Oklahoma v. State of Texas*, 260 U.S. 606, 43 S.Ct. 221, 67 L.Ed. 428 (1923).

bank the boundary is, and the proper mode of locating it on the ground—these being matters on which the parties were unable to agree. 256 U.S. 608, 41 Sup. Ct. 539, 65 L.Ed. 1114. Additional evidence filling several printed volumes was afterwards taken, and the further hearing was had near the close of the last term.” (Emphasis Ours)

If the United States, as the Special Master found, was reserving half of the Sabine to be awarded to Texas, when and if it ever became a State, why didn't this Court accept this argument in the cases involving the Red River? The argument is unsound and was rejected by this Court in the cases involving the Red River boundary.

Texas never asserted any *positive* act of possession in the west half of the Sabine (such as the granting of oil, gas, and mineral leases and/or sand, shell and gravel permits, etc.), outside of those things necessary to enjoy the “use and navigation” thereof, as far as this record is concerned, until May 31, 1930, when the Game, Fish and Oyster Commission of Texas granted a sand, shell and gravel permit to J. C. Reynolds of Port Arthur, Texas.²² From this date both Texas and Louisiana have leased the west half of the Sabine River, Sabine Lake and Sabine Pass for oil and for shell dredging.²³

The dispute between Texas and Louisiana, once natural resources were extracted from the soil and subsoil of the Sabine, reached a point where the Gov-

²² Texas Exhibit E, Item 23 (3)

²³ Louisiana Exhibits D and E, but see pp. 65-66, Report of Special Master [Appendix C(b)].

ernor of Louisiana, Honorable Sam H. Jones, advised the Governor of Texas, on or about November 27, 1941, that Louisiana asserted jurisdiction to the west bank of the Sabine as fixed by the Treaty of 1819 and finally surveyed and staked.⁶⁴ Louisiana went so far as to pass an act authorizing a suit to establish this boundary.⁶⁵

This Court can take judicial notice of the fact that at the time of this controversy the United States was engaged in the World War II. Nothing further was done at that time, and in 1947 Louisiana and Texas became involved in a controversy with the United States over its tidelands. Louisiana asserted in this record, and it was not denied by Texas, that there was a tacit understanding that, pending the tidelands litigation, the boundary dispute would not be pushed.⁶⁶ Texas settled its tidelands issue on May 5, 1969,⁶⁷ and instituted this suit on the 10th day of December, 1969.⁶⁸

Mr. Bonnacarrere, representing the Louisiana State Mineral Board for many years, testified that officials of Louisiana and Texas were familiar with the dispute over the boundary and that many of the leases introduced in evidence by Texas carried special provisions, providing that the granting of the leases, limited to a portion of the Sabine, were not to be construed as abandoning any right of Louisiana to

⁶⁴ Louisiana Exhibit B, Item 1; also Appendix "A", Item 2.

⁶⁵ La. Acts 1942, No. 295 (Louisiana Exhibit B, Item 5).

⁶⁶ Transcript, p. 109, pp. 145-148, and 236-238. (Testimony of C. J. Bonnacarrere, Executive Secretary of the State Mineral Board of Louisiana.)

⁶⁷ 89 S.Ct. 1614, 394 U.S. 836 (1969)

⁶⁸ 397 U.S. 931

the bed and subsoil of the Sabine to its west bank." Some of the agreements were signed by Texas.

We fail to find in the Special Master's report where he considered the effect of the right of the inhabitants of Texas to the "use" of the water of the Sabine. This right is an important factor in distinguishing this case from the ones relied on by the Special Master to sustain his findings of acquiescence and prescription.

One of the cases relied heavily on by Texas as establishing acquiescence and prescription is the case decided by this Court, entitled, *State of Michigan vs. State of Wisconsin*, 270 U.S. 295, 46 S.Ct. 290, 70 L.Ed. 595 (1926). This was one of the cases cited by the Special Master in his report to sustain his finding of acquiescence and prescription. A portion of the boundary of Michigan in the Act creating Michigan out of the Territory of Wisconsin was erroneous. This erroneous description was discovered by Michigan in 1840-1841, prior to the time that Wisconsin was admitted as a state in 1848. Congress directed a survey of

" 'so much of the line between Michigan and Wisconsin as lies between the source of Brulé River and the source of Montreal River, as defined by the (Wisconsin Enabling Act),' 9 Stat. 85, 97, c. 175, Sec. 4, and in pursuance thereof a survey was made by William A. Burt in 1847. Burt's line, which was marked with posts set at half-mile intervals and otherwise identified, substan-

⁶⁶ Transcript, pp. 90-98, p. 121, and pp. 178-181

tially followed Cram's recommendation and is the line now claimed by Wisconsin."

Cram made the initial survey in 1840. The Court then went on to hold:

"When admitted to statehood, Wisconsin was, and ever since has continued to be, in possession of the area in dispute, that is to say, of all lands within the boundary which she now claims. As early as 1850, county government was established upon the basis of this boundary. In 1874, taxes were assessed and collected by Wisconsin, and by 1886 practically the entire area had been subjected to such taxation. During this time, towns were built, highways constructed, public buildings erected, elections held, Wisconsin law enforced and other customary acts of dominion and jurisdiction exercised by that state within the disputed area."

The remainder of the case dealt primarily with islands that had been in possession of Wisconsin. The Court will be impressed in reading this case that it related to an established boundary where physical possession was taken on the landed portion up to the boundary.

In the instant case, we are dealing with water bodies. The only landed portion of the boundary established by the Treaty of Amity of 1819 was that from the 32° of north latitude to the 33° of north latitude, and as to this portion of the boundary, Louisiana has taken and exercised possession up to the Treaty boundary, as surveyed and staked in 1839-1841.

Another case relied on by the Special Master is *State of Arkansas vs. State of Tennessee*, 310 U.S. 563, 60 S.Ct. 1026, 84 L.Ed. 1362 (1940). In that case, the land in controversy was, in 1819, on the west side of the main channel of the Mississippi River and was part of the Territory of Arkansas. An avulsion at Needham's Cutoff occurred in 1821, and the main channel of the river flowed through the cutoff prior to 1836. In 1836, when Arkansas was admitted into the Union, the lands in controversy were on the east side of the main channel of the Mississippi River. The avulsion did not change the boundary line theretofore existing between Tennessee and the Territory of Arkansas. The Act of Admission of Arkansas included this territory. Tennessee had been admitted into the Union in 1796, with its western boundary in the main channel of the Mississippi River. The Special Master found that from 1926, to the date of filing the suit, Tennessee had continually exercised dominion and jurisdiction over the *lands* in controversy.

Here again, in that case, we are dealing with lands possessed by one State to the exclusion of another State. The facts in that case are distinguishable from the facts in the case now before the Court, since we are *not* here dealing with any *land* boundary, but with an unsurveyed and unstaked boundary in water bodies.

Other cases recognizing the doctrine of acquiescence and prescription relate to established *land boundaries*.

State of Indiana v. State of Kentucky, 136 U.S. 479, 10 S.Ct. 1051, 34 L.Ed. 329 (1890), involved the title to an island in the Ohio River and the question was whether the boundary was the north channel or the south channel. Kentucky proved that it had exercised control, jurisdiction and possession over the island.

Another case, *State of Maryland v. State of West Virginia*, 217 U.S. 1, 30 S.Ct. 268, 54 L.Ed. 645 (1910), was a dispute over which line—the Deakins line, or the Michler line—was correct; the court held that the former had been recognized and used as a boundary on both sides.

State of New Mexico v. State of Colorado, 267 U.S. 30, 45 S.Ct. 202, 69 L.Ed. 499 (1925), concerned the location on the ground of the Darling line. The doctrine of recognition of a long existing physical status was applied.

State of Louisiana v. State of Mississippi, 202 U.S. 1, 26 S.Ct. 408, 50 L.Ed. 913 (1906), was a boundary action in which the determining factor was possession and control of the St. Bernard Peninsula.

Most of the cases concerned boundaries laid out on terra firma, where water boundaries were involved, but possession of the water did not constitute an issue. For example, *State of Indiana v. State of Kentucky*, supra, and *State of Arkansas v. State of Tennessee*, supra, involved disputes as to which arm or branch of the Ohio and Mississippi Rivers, respectively, constituted the correct boundary. In each, an island

lay between the branches; and possession of the island—not of any of the streams—was the deciding factor.

In *State of Louisiana v. State of Mississippi*, supra, the court upheld Louisiana, following the thalweg along the watercourse claimed by Louisiana east of the St. Bernard Peninsula. If Mississippi had prevailed, the entire St. Bernard Peninsula would have been transferred from Louisiana to Mississippi. Possession did not involve a watercourse but land between water channels. The Supreme Court held that the area in question, consisting of low lands, marshes, islands, and such had been under the dominion and control of Louisiana for many years.

In enumerating the criteria relied on to prove possession, control, acquiescence and dominion, in all of the foregoing cases, the Court emphasized such acts as paying taxes, land titles, voting in elections, jurisdiction of courts, enforcement of laws, etc., as being of high importance.

It is readily apparent that none of the foregoing decisions can possibly apply to the facts in the litigation at hand. The essential point is that not only could there have been no dominion over or control of the west half of the Sabine, but practically nobody knew where the middle of the river was at any given point or at any particular time.

Assuming that the thalweg rule applies, there would have been a constant change in the "main channel of navigation." Assuming pro arguendo that the geographic middle of the Sabine is correct in delin-

eating the "middle", it would have been impossible for a layman using the river or even a government official in granting a lease to know where the geographic middle was.

In *State of New Jersey v. State of Delaware*, 291 U.S. 361, 54 S.Ct. 407, 78 L.Ed. 847 (1934), there were two points at issue, involving the correct boundary between the States of New Jersey and Delaware. One of these points was the question of whether Delaware owned the entire bed of the Delaware River within a circle of 12 miles about the town of New Castle, referred to as the "Circle", or whether she owned only to the center. New Jersey contended that the proper boundary was the middle of the river.

The Court analyzed the various legislative enactments, finding that the true and correct boundary between the States of Delaware and New Jersey was the eastern bank of the Delaware River. The holding was that the entire bed of the Delaware River within the limits of "The Circle" up to low-water mark on the eastern bank was owned by Delaware.

New Jersey contended that riparian proprietors who were citizens of New Jersey and held their titles from her had been permitted by Delaware to build wharves and piers projecting into the Delaware River within "The Circle"; and that, as the structures were built and maintained without protest on the part of Delaware and, in fact, with her approval, this constituted an acquiescence in the ownership of New Jersey of half of the Delaware River comprised with-

in the 12-mile "Circle" about the town of New Castle.

Justice Cardozo, as the organ of the Court, disposed of these contentions in the following significant language, at page 412:

"The acts of dominion by riparian proprietors are connected with the building of wharves and piers that project into the stream. The structures were built and maintained without protest on the part of Delaware, and no doubt with her approval. There is nothing in their presence to indicate an abandonment by the Sovereign of title to the soil. *By the law of waters of many of our states, a law which in that respect has departed from the common law of England, riparian proprietors have very commonly enjoyed the privilege of gaining access to a stream by building wharves and piers, and this though the title to the foreshore or the bed may have been vested in the state.* Yates v. Milwaukee, 10 Wall. 497, 19 L.Ed. 984; Scranton v. Wheeler, 179 U.S. 141, 157, 158, 21 S.Ct. 48, 45 L.Ed. 126; Shively v. Bowlby, supra, at pages 24, 55 of 152 U.S. 14 S.Ct. 548; Town of Brookhaven v. Smith, 188 N.Y. 74, 80 N.E. 665, 9 L.R.A. (N.S.) 326; United States v. Dern, 289 U.S. 352, 357, 53 S.Ct. 614, 77 L.Ed. 1250. New Jersey in particular has been liberal in according such a license (State v. Jersey City, 25 N.J. Law, 525), and so, it seems, has Delaware (Harlan & Hollingsworth Co. v. Paschall, 5 Del. Ch. 435; State v. Reybold, 5 Har. 484, 486), though in Delaware, unlike New Jersey, title to the foreshore is in the riparian proprietor. From acquiescence in these improvements of the river front, there can be no legitimate inference that

Delaware made over to New Jersey the title to the stream up to the middle of the channel or even the soil under the piers. The privilege or license was accorded to the owners individually and even as to them was bounded by the lines of their possession."

Texas and the Special Master place considerable reliance on the case of *State v. Burton*,⁷⁰ and other statements and written data by Louisiana officials which contain language to the effect that, within the context and circumstances of their utterances, the middle of the Sabine water system from the Gulf to the 32° of north latitude was believed to be the correct boundary between Louisiana and Texas. None of these statements estop Louisiana in any way, nor do they constitute any type of *res judicata* or binding administrative and/or judicial acts.

All of such statements were rendered in connection with litigation that did not involve or even concern the precise location of the boundary. They were uttered "en passant", and were not intended to be declarations determinative of the boundary location.

The boundary was a pertinent point, in *State v. Burton*, *supra*. This was a criminal case and the record shows that the Supreme Court did not have the benefit of the authorities herein relied upon when it simply held that the *criminal jurisdiction* of Louisiana extended only to the middle of the Sabine.

This is evident when one considers that the Lou-

⁷⁰ 105 La. 516, 29 So. 970 (1901).

isiana Supreme Court compressed within the narrow confines of a single paragraph, and in the most cavalier fashion, all the law that it had before it; this included reference to a Texas Act of 1856 and a decision by the Criminal Court of Appeals of Texas (*Spears v. State*, 8 Tex. App. 467).

The Court will recall that in the resolution adopted by the Legislature on March 16, 1848,⁷¹ this hiatus in the criminal law was dealt with. The Louisiana Legislature expressed the belief that the laws of Louisiana did not extend over the western half of the Sabine. It left no doubt that it thought the actual boundary was located on the Sabine's west bank, when it asked Congress to extend the state's jurisdiction to the western bank of the Sabine; i.e.:

"And thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the State of Texas." (Emphasis Ours)⁷²

It is axiomatic that criminal proceedings must be based on positive law free from any doubt. The Legislature had no doubt as to the location of the Louisiana-Texas boundary, the west bank of the Sabine, but had some doubt of its criminal jurisdiction over the whole of the Sabine.

This Court has made it clear that decisions of state courts taking an erroneous view of the law are

⁷¹ Louisiana Exhibit A, Item 19 (pp. 288-288A); also Appendix "A", Item 1.

⁷² Louisiana Exhibit A, Item 19.

not binding in a direct action between states involving solely the issue of the location of the boundary between them.

In *State of Arkansas v. State of Mississippi*, 250 U.S. 39, 39 S.Ct. 422 63 L.Ed. 832 (1919), this court considered certain decisions and expressions by the Supreme Court of Mississippi concerning local questions in which that court stated its belief that the geographic middle of the river was the correct boundary. This Court disregarded such expressions in their entirety, declaring:

"But whatever may be the effect of these decisions upon *local rights of property or the administration of the criminal laws of the state*, when the question becomes one of fixing the boundary between states separated by a navigable stream, it was specifically held in *Iowa v. Illinois*, *supra*, followed in later cases, that the controlling consideration is that which preserves to each state equality in the navigation of the river, and that in such instances the boundary line is the middle of the main navigable channel of the river." (Emphasis Ours)

In *State of Arkansas v. State of Tennessee*,⁷³ the Supreme Court of Arkansas had handed down an opinion that the boundary line between the two rivers was equidistant from the permanent banks of the channel. The Supreme Court of Tennessee had reached a similar conclusion. Furthermore, Tennessee's General Assembly appointed a commission to locate the line in an abandoned channel of the river. You held that none

⁷³ 246 U.S. 158, 38 S.Ct. 301, 62 L.Ed. 638 (1918).

of these decisions and legislative acts amounted to such acquiescence as would determine the true location of the boundary.

Apropos of the case of *State v. Burton*, supra,¹⁴ upon which Texas and the Special Master place great reliance and which is discussed heretofore, it is interesting to note that this Court, in this case of *State of Arkansas v. State of Tennessee*, refused to follow an Arkansas state decision which, like *State v. Burton*, supra, involved prosecution for violation of the liquor laws. At page 304 of 38 S.Ct., the following appears:

"It is said that Arkansas has interpreted the line to be at a point *equidistant* from the well-defined and permanent banks of the river, that Tennessee likewise has recognized this boundary, and that by long acquiescence on the part of both States, in this construction, and the exercise of jurisdiction by both in accordance therewith, the question should be treated as settled. The reference is to certain judicial decisions, and two acts of legislation. In *Cessill v. State* (1883) 40 Ark. 501, *which was a prosecution for unlicensed sale of liquors upon a boat anchored off the Arkansas shore*, it was held that the boundary line, as established by the original treaties and since observed in federal legislation, state constitutions, and judicial decisions was the 'line along the river bed equidistant from the permanent and defined banks of the ascertained channel on either side.' This was followed in subsequent decisions by the same court. *Wolfe v. State* (1912) 104 Ark. 140, 143,

¹⁴ Also, 106 La. 732, 31 So. 291 (1902).

148 S.W. 641; *Kinnanne v. State* (1913) 106 Ark. 286, 290, 153 S.W. 262. The first pertinent decision by the Supreme Court of Tennessee is *State v. Pulp Co.* (1907) 119 Tenn. 47, 104 S.W. 437, in which a similar conclusion was reached, partly upon the ground that it had been adopted by the courts of Arkansas." (Emphasis Ours)

Following this, the Court discussed Tennessee statutes and Arkansas decisions which latter, as the Court said: "had for their object the establishment of a proper rule for the administration of the criminal laws of the State."

In *State of Oklahoma v. State of Texas*, 272 U.S. 21, 47 S.Ct. 9, 71 L.Ed. 145 (1926) the syllabus reads as follows:

"In action to establish boundary between Oklahoma and Texas north from South fork of Red river, stipulation of parties that since 'Greer County' decision of the United States and the territory and State of Oklahoma, in succession, *had continuously enforced their civil and criminal laws over territory in dispute, held insufficient to establish Oklahoma's claim to such territory by prescription.*" (Emphasis Ours).

In *State of New Jersey v. State of Delaware*, *supra*, this court disregarded proof of assessments for taxes, making of deeds, and service of process by New Jersey in the disputed area, inasmuch as there was no showing that Delaware had acquiesced.

Your Honors have never passed on the western boundary of Louisiana. In *United States v. State of*

Louisiana, et al.,⁷⁸ decided in 1960 to determine the water boundaries of the Gulf Coast states under the Submerged Lands Act of 1953, in which both Texas and Louisiana were parties, Louisiana urged that the Treaty of 1819 and the subsequent treaties fixed its western boundary. In commenting on this contention of Louisiana, this Court said:

"Certain treaties successively entered into from 1819 to 1838 by the United States with Spain, Mexico, and the Republic of Texas establishing the boundary between Texas and the United States are relied on as indicating that the State and Federal Governments thought that Congress had fixed a three-league maritime boundary for Louisiana. *Louisiana contends that the treaties fixed the beginning of the international boundary at a point three leagues from land, and that therefore the southwestern corner of Louisiana* as well as the southeastern corner of Texas must have been regarded as extending seaward to that distance. Whether or not such reasoning is valid, the language of the treaties refutes the premise that the international boundary began three leagues from land. Both the 1819 and the 1828 treaties recited that '[t]he boundary line between the two countries, west of the Mississippi, shall begin on the Gulph of Mexico, at the mouth of the river Sabine, in the sea * * *.' The Treaty of 1838 referred to the Treaty of 1828, and provided for a survey of 'that portion of the said boundary which extends from the mouth of the Sabine, where that

⁷⁸ 363 U.S. 1, 80 S.Ct. 961, 4 L.Ed. 2d 1025, reh. den. 364 U.S. 856, 81 S.Ct. 36, 5 L.Ed. 2d 80, supplemented 382 U.S. 288, 86 S.Ct. 419, 15 L.Ed. 2d 331.

river enters the Gulph of Mexico to the Red river.' " (Emphasis Ours)

Texas must have thought that Louisiana's boundary was fixed by the Treaty of Amity in 1819, for Will Wilson, then Attorney General of Texas stated, in his argument before this Court in the preceding case made these comments:

Argument on behalf of the State of Louisiana, Texas, Mississippi, Alabama and Florida, Defendants, by Will Wilson, Attorney General for Texas:

"Mr. Wilson: Mr. Justice Black, may it please the Court, the Solicitor has elected to pitch his case against Texas on the proposition that this three-league boundary shrunk when Texas came into the Union, and we join issue squarely with him on that on the facts.

"When the Congress of Texas sat down in 1836, in December, to pass that Act, it was looking at several things. The thing that they were most conscious of was the treaty between Spain and the United States in 1819, *which fixed the boundary between Texas and Louisiana*, and it called it to commence 'on the Gulf, at the mouth of the Sabine, in the sea.' So the first thing they had to consider was that the boundary called to commence in the sea." (Emphasis Ours)⁷⁶

This argument was considered by the Special Master.⁷⁷

While there was some discussion in the brief of

⁷⁶ Louisiana Exhibit H, Item 1.

⁷⁷ Appendix E (E.), Item 4 (p. 108), Report of Special Master.

Louisiana in the 1960 case concerning the constitutional provision admitting Louisiana into the Union as a state in 1812, nevertheless, Louisiana was arguing that its western boundary was established by the Treaty of 1819. This fact was noted by this Court, as we have already indicated.

In testifying in this case, Mr. R. C. Wisdom, Director of the Surveying Division of the Texas General Land Office, admitted that maps introduced in evidence,⁷⁸ purporting to show a line in the Sabine as the boundary between Louisiana and Texas were different on the two maps. This indicates that there was no fixed, definite, determined boundary.

Mr. Hatley N. Harrison, Jr.⁷⁹ testified that the various maps prepared by the U. S. Coast and Geodetic, purporting to show lines in the Sabine, differ at times,⁸⁰ which again illustrates that there was no definite, established line to fix a water boundary between Texas and Louisiana by acquiescence and prescription.⁸¹

⁷⁸ Transcript pp. 566-568.

⁷⁹ Chief, Lands & Surveys Division, Department of Public Works, State of Louisiana.

⁸⁰ Transcript pp. 872-888.

⁸¹ It is very important for this Court to consider, now that the Special Master has filed his report, that Texas, which deliberately excluded from the relief sought in this Court the establishment of the lateral boundary between Texas and Louisiana in the Gulf of Mexico, has now publicly asserted the extension of a midstream boundary into the Gulf, disregarding the extension of the line on most of the maps relied on by Texas to establish a midstream boundary in the Sabine. For example, Texas Exhibit A, p. 3 (U.S. Geological Survey—Sabine Pass Quadrangle, 1932); p. 21 (Texas Point, Texas, La., 1948); and p. 26 (U.S. Geological Survey—Sabine Pass Quadrangle, 1957). For the contrary, see Appendix "A" to this Brief, Item 4.

The same is true of the area where the Sabine River enters into Sabine Lake, for Texas has taken various positions on maps as to what channel is to be used from the Sabine River into the Sabine Lake. This materially affects any line that is drawn, attempting to establish a boundary in Sabine Lake.

We urge all of Texas' exhibits dated after 1941,⁸² are irrelevant, and Louisiana bases this assertion on Governor Jones' formal letter of protest of 1941,⁸³ and the informal agreement between officials of Louisiana and Texas that a decision on the Sabine boundary question would be held in abeyance pending the outcome of the Tidelands litigation with the United States. According to Louisiana Exhibit U, more than half of Texas' exhibits and maps are dated subsequent to 1941.

There can be no question that, even before 1941, and certainly since that time Louisiana has claimed and asserted ownership to the bed and subsoil of the Sabine to the west bank. Texas urged it has exercised possession and jurisdiction over the west half of the Sabine from 1849 to date, with the acquiescence of Louisiana. We urge that the uncontradicted evidence does not bear out these assertions.

We must remember, we are here dealing with navigable bodies of water. This fact has been stipulated to by both Louisiana and Texas.⁸⁴

⁸² Louisiana Exhibit U.

⁸³ Louisiana Exhibit B, Item 1.

⁸⁴ Pre-Trial Order and Stipulation dated September, 1970, particularly stipulation 3(a).

The Special Master, in support of his finding that Louisiana had lost the bed and subsoil of the west half of the Sabine to Texas by acquiescence and prescription, relied, in large measure on works performed in these navigable waters, such as the construction of bridges,⁸⁵ pipe lines,⁸⁶ navigation channels⁸⁷ and a reclamation project adjacent to the City of Port Arthur.⁸⁸

All of these works had to be authorized by the United States since it has a "dominant servitude" over these navigable streams to the ordinary high water mark.

The United States is authorized to permit these works if they are not objected to by Louisiana. This does not mean that the person constructing the works, including Texas, acquires title to the bed and subsoil of the Sabine, which belongs to Louisiana. There is no evidence in the record, and none was found by the Special Master, that the title of Louisiana to the bed and subsoil of the Sabine was placed at issue during the construction of these various works.

This Court, in *United States v. Rands*, 389 U.S. 121, 88 S.Ct. 265, 19 L.Ed. 2d 329 (1967), had this to say:

"The Commerce Clause confers a unique position upon the Government in connection with navigable waters. The power to regulate commerce comprehends the control for that purpose,

⁸⁵ Appendix E(a), Appendix D(c), Report of Special Master.

⁸⁶ Appendix C, I(C) and III, Report of Special Master.

⁸⁷ Appendix D(a), Report of Special Master.

⁸⁸ Appendix E(c), Report of Special Master.

and to the extent necessary, of all the navigable waters of the United States***. For this purpose they are the public property of the nation, and subject to all the requisite legislation by Congress.' *Gilman v. City of Philadelphia*, 3 Wall. 713, 724-725, 18 L.Ed. 96 (1866). This power to regulate navigation confers upon the United States a 'dominant servitude,' *FPC v. Niagara Mohawk Power Corp.*, 347 U.S. 239, 249, 74 S.Ct. 487, 493, 98 L.Ed. 686 (1954), which extends to the entire stream and the stream bed below ordinary high-water mark. The proper exercise of this power is not an invasion of any private property rights in the stream or the lands underlying it, for the damage sustained does not result from taking property from riparian owners within the meaning of the Fifth Amendment but from the lawful exercise of a power to which the interests of riparian owners have always been subject. *United States v. Chicago, M., St. P. & P. R. Co.*, 312 U.S. 592, 596-597, 61 S.Ct. 772, 775, 85 L.Ed. 1064 (1941); *Gibson v. United States*, 166 U.S. 269, 275-276, 17 S.Ct. 578, 580, 41 L.Ed. 996 (1897). Thus, without being constitutionally obligated to pay compensation, the United States may change the course of a navigable stream. *State of South Carolina v. State of Georgia*, 93 U.S. 4, 23 L.Ed. 782 (1876), or otherwise impair or destroy a riparian owner's access to navigable waters, *Gibson v. United States*, 166 U.S. 269, 17 S.Ct. 578 (1897); *Scranton v. Wheeler*, 179 U.S. 141, 21 S.Ct. 48, 45 L.Ed. 126 (1900); *United States v. Commodore Park, Inc.*, 324 U.S. 386, 65 S.Ct. 803, 89 L.Ed. 1017 (1945), even though the market value of the riparian owner's land is substantially diminished."

None of the works forming the category above noted could have been constructed without the authorization of the United States.

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, break-water, bulkhead, jetty, or other structures, in any part, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army; and it shall not be lawful to excavate or fill, or in any manner to alter or modify the course, location, condition, or capacity of, any port, roadstead, haven, harbor, canal, lake, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army prior to beginning the same." ⁸⁸

The construction of bridges across navigable streams is regulated by the United States:

"When, after March 23, 1906, authority is granted by Congress to any persons to construct and maintain a bridge across or over any of the navigable waters of the United States, such bridge shall not be built or commenced until the

⁸⁸ 33 U.S.C.A. §403.

plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of the Army and Chief of Engineers for their approval, nor until they shall have approved such plans and specifications and the location of such bridge and accessory works; and when the plans for any bridge to be constructed under the provisions of sections 491 to 498 of this title, have been approved by the Chief of Engineers and by the Secretary of the Army it shall not be lawful to deviate from such plans, either before or after completion of the structure, unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of the Army." ⁹⁰

In addition to the "dominant servitude" of the United States over these navigable waters, the inhabitants of Texas likewise had a "servitude of use." The works constructed by inhabitants of Texas or under authority of Texas were constructed either by authority of the United States under its "dominant servitude" or under the "servitude of use" which was granted by the Treaty of 1819. Such acts do not constitute acts of possession adverse to the title of Louisiana to the bed and subsoil of the Sabine, which title is subject to these servitudes.

Texas urges various navigational improvements undertaken by the U. S. Corps of Engineers to show

⁹⁰ 33 U.S.C.A. §491.

acquiescence by Louisiana. The various documents that have been filed show that the first navigational channel at Port Arthur was constructed on private rights-of-way and in most instances west of the west bank of the Sabine.⁹¹ Later this navigational channel was enlarged by the U. S. Corps of Engineers as part of the national waterway system. It was used by Louisiana in connection with the Port of Lake Charles from 1926 until the deep water channel was dug directly from Lake Charles through Cameron into the Gulf. There is nothing in any of the documents or maps relating to the works performed by the Corps of Engineers to show any acquiescence on the part of Louisiana to establish title in Texas to the bed and subsoil of the west half of the Sabine. All of this work was done under the right of "navigation", granted by the Treaty of 1819, and the "dominant" servitude of the United States over navigable waters.

The first time we have been able to find any question of title arising between Louisiana and Texas to the Sabine was at the "Narrows." Texas patented land on the island between the two channels of Sabine River at the "Narrows", as did Louisiana.⁹² Texas retained title to all unappropriated public land when it was admitted as a State of the Union in 1845.⁹³

The question of the "Narrows" was finally submitted to the Secretary of the Interior, General Land

⁹¹ Transcript, pp. 243-246 (Testimony of Robert A. Bowers, Planning Engineer, City of Port Arthur, Texas).

⁹² Louisiana Exhibit S, particularly exhibits attached thereto.

⁹³ 9 U.S. Stat. 108.

Office, for his decision. The basic question was a determination of which channel of the Sabine was used in fixing the western boundary in the Treaty of 1819, which was later surveyed in 1840-41. It was held that the islands in Sabine River, at the point known as the "Narrows" had passed to Louisiana from the United States under its Swamp Lands Grants.⁹⁴ The west bank of the western channel of the River at this point was recognized as the boundary between Louisiana and Texas.⁹⁵ Obviously, this placed the lands claimed by Texas in Louisiana. The Texas patents were cancelled, as so testified by Mr. Ray Wisdom.⁹⁶ The question of ownership of the bed and subsoil of the Sabine to the western bank thereof was not at issue in that case.

Mr. Frank Pierce, First Assistant Secretary, Commissioner of the General Land Office, in his opinion dated June 27, 1910, stated:

"In the absence of any term limiting or re-

⁹⁴ Louisiana Exhibit N, p. 4; Texas Exhibit B, Item 1.

⁹⁵ Appendix D(d), Report of Special Master, which reads: "(D.) 1932. Texas' Exhibit B, pp. 46-49. On March 1, 1932, the Acting Assistant Commissioner of the U. S. General Land Office wrote a letter to a Louisiana title company in response to questions about the water boundary between Texas and Louisiana. After outlining the history of the Sabine boundary between the two States, the Commissioner made reference to an earlier controversy over islands in Sabine River where it was held that for purposes of the island question, *'the west bank of the western channel of the river at this point will be recognized as the boundary between the States of Louisiana and Texas.'* The Commissioner then stated: *'This would appear to fix the boundary line through Sabine Lake, no differentiation between the river and the lake having appeared in any of the treaties or acts of Congress, supra.'*" (Emphasis Ours)

⁹⁶ Transcript, pp. 571-573.

stricting the boundary to a particular channel of the river, the limits described would extend, by the plain language of the statute, to the farthest or western channel of the river, even if the other descriptive term, 'including all islands,' had been omitted; but when considered together those terms of description indicate with absolute certainty that the western boundary of the state is the farthest western branch or channel through which any part of the waters of the Sabine River may naturally flow."⁹⁷

Texas has categorically stated that, if 1941 is fixed as the date on which Louisiana first established or initiated its claim to the west bank of the Sabine, there are still 92 years between that date and 1848 and Texas claims that Louisiana has acquiesced in its claim to a mid-stream boundary during that period of time. However, as we have hereinabove stated, the earliest evidences of any affirmative action (such as leasing parts thereof) taken by Texas in the Sabine (aside from the "Narrows" litigation), is around 1930. In that year Texas leased acreage in the Sabine to J. C. Reynolds.⁹⁸ If this deed or lease to Reynolds in 1930 was an assertion of ownership, then only eleven (11) years passed between that time and 1941 when Governor Jones asserted title to the bed and subsoil of the Sabine to its western banks on behalf of Louisiana. Additionally, Texas has not introduced any evidence tending to show that there was any affirmative action taken under this lease by Reynolds to possess the bed and subsoil of the Sabine

⁹⁷ Texas Exhibit B, Item 1.

⁹⁸ Texas Exhibit E, Item 23(3).

and the mere granting of a lease, of itself, cannot amount to an affirmative act of possession.⁹⁹

Texas urged and the Special Master ruled that Louisiana should have been more vigorous in asserting its claim, even to the extent of instituting legal action. This finding is made in spite of the fact that the officials of the respective states tentatively understood that the boundary dispute would not be pushed, pending a decision in the Tidelands litigation.¹⁰⁰

As we have indicated Texas bases its claim of acquiescence by Louisiana on innumerable maps,¹⁰¹ oil and gas and shell leases,¹⁰² and such presented in its exhibits. However, of those exhibits filed prior to the hearing in Houston in December, 1970, 184 items were dated *after* 1941, and 125 items dated before 1941.¹⁰³ Additionally, 71 maps were dated *after* 1941 and 63 maps dated prior thereto.

⁹⁹ Texas Exhibit C, Items 18 and 24. Item 18 contains an addendum, dated April 25, 1939, in which it is stated that Louisiana was claiming the benefit of the 1819 Treaty and that the Act of 1848 authorizing Texas to extend its jurisdiction to the middle of the Sabine was unconstitutional, etc. This is another indication that, even prior to Governor Jones' letter of 1941, Louisiana officials were cognizant of the boundary problem and making a serious claim to the west bank of the Sabine.

¹⁰⁰ This Court has held that states being political subdivisions, do not act with the same promptness as individuals in asserting claims. *State of Vermont v. State of New Hampshire*, 289 U.S. 593, 53 S.Ct. 708, 77 L.Ed. 393 (1933).

¹⁰¹ We again call to this Court's attention the inconsistent position now being taken as to maps relied on by Texas in this case and which Texas officials are now publicly asserting as to an extension of its boundary offshore. See Note 81.

¹⁰² The Special Master found (and made note of it in the appendix to his report) that Louisiana executed leases covering the west half of the Sabine starting in 1922. Louisiana Exhibit E; Appendix C II, Report of Special Master.

¹⁰³ Louisiana Exhibit U.

Texas filed in evidence certain sand, shell and gravel permits issued by the Texas Game, Fish and Oyster Commission or its successors on Sabine River.¹⁰⁴ However, the earliest permit noted therein is dated May 31, 1930, which is only eleven (11) years prior to Governor Jones' letter in 1941. Only six (6) of the 32 permits noted therein were issued prior to 1941 and Texas has presented no evidence to show that sand, shell and/or gravel was ever removed from those bodies of water under these permits. The mere granting of these permits cannot, of itself, amount to an affirmative act of possession by Texas of the bed and subsoil of the Sabine.

Additionally, as can be seen from the affidavit of Mr. Jerry Sadler,¹⁰⁵ former Commissioner of the

¹⁰⁴ Texas Exhibit E; Appendix C I(a), Report of Special Master.

¹⁰⁵ Texas Exhibit B, Items 7-8; but see statement at pp. 65-66, Appendix C I(b), Report of Special Master, which reads:

"(B) Oil and Gas Leases Executed by Texas

Only one oil and gas lease executed by Texas is actually in evidence (Texas' Exhibit FF, dated December 11, 1958. The attached map shows a mid-Sabine boundary.). However, there is in evidence an affidavit from Jerry Sadler, Commissioner of the Texas General Land Office, which lists the various Texas leases from 1950 to 1969 (Texas' Exhibit B, pp. 50-56). Some of these are tracts which Texas offered to lease but no bids were received. The tax records on these various leases are found in Texas Exhibit B, pp. 76-83.

On April 16, 1964, the Louisiana State Mineral Board protested Texas' advertising certain tracts in the west half of Sabine Lake for oil, gas, and mineral leases (Louisiana's Exhibit B, pp. 49-53). The Louisiana Attorney General registered a similar protest with the Texas General Land Office on January 31, 1966 (Louisiana's Exhibit B, pp. 54-56)."

General Land Office of Texas, oil and gas leases have been granted by Texas but the earliest thereof seems to be dated December 9, 1950, or some nine (9) years after Governor Jones's letter of 1941.

There was no occasion for Louisiana to institute formal proceedings to dispossess Texas from any possession of the bed and subsoil of the Sabine until it, through its lessees, started digging for shell and/or drilling for oil. This was all of recent time and mostly during the period when Texas and Louisiana were involved in litigation with the United States over the Tidelands issue.

Texas, in cross-examining Mr. C. J. Bonnecarrere, introduced certain unitization agreements and division orders, which it contended showed Louisiana's acquiescence to Texas' claim to a mid-stream boundary. However, most of these agreements and orders contained a clause to the effect that nothing therein would be used as evidence in any litigation nor construed as establishing a boundary. Nonetheless, Texas urged these items to establish its claim of acquiescence. We have already shown Mr. Bonnecarrere, in his testimony, made it clear that, since 1941, Louisiana has attempted in every known instance, to formally protest the granting by Texas of oil, gas and mineral leases in the west half of the Sabine.

The only affirmative evidence presented that any possession occurred under any of the Texas oil, gas, and mineral leases, was in reference to the Phoenix Lake Field, which was developed about 1952 or some

eleven (11) years after Governor Jones' vigorous letter of 1941.

The right to "use" and "navigate" the waters of the Sabine required the cooperation of both sides in constructing structures in the Sabine so that there would be no interference with these joint rights.

To create some order out of this situation of joint use and navigation of the Sabine, Congress consented as we have shown that Texas be permitted to extend its criminal jurisdiction to the middle of the Sabine.¹⁰⁶ As a result, it was only natural for Texas and Louisiana, under these Acts, to cooperate in enforcing hunting and fishing regulations, as the inhabitants of both states had the right to hunt and fish in these waters, the building of bridges across the Sabine for the benefit of the inhabitants of both sides and in construction of other improvements for the benefit of both states. The participation by Louisiana in these acts was not intended to acquiesce in or recognize a mid-stream boundary.

In 1954, in order to "use" the water of the Sabine, Texas and Louisiana, for the first time, with the approval of the United States, entered into a formal

¹⁰⁶ With this in mind it is easy to see why many maps had a line in the Sabine. The Special Master recognized these lines were not placed thereon to specifically establish a boundary when he said in his report: "Obviously, none of the maps were prepared with the express purpose of establishing what the Texas-Louisiana boundary was, and thus the 'intent' of the makers only concerned what the particular map concerned, for example, shell leases." Appendix B II, Report of Special Master.

compact which contained the following language, namely:

"This Compact is made and entered into for the sole purpose of effecting an equitable apportionment and providing beneficial uses of the waters of the Sabine River, its tributaries and its water shed, without regard to the boundary between Louisiana and Texas, and *nothing herein contained shall be construed as an admission on the part of either State or any agency, commission, department or subdivision thereof, respecting the location of said boundary; and neither this Compact nor any data compiled for the preparation or administration thereof shall be offered, admitted or considered in evidence, in any dispute, controversy or litigation bearing upon the matter of the location of said boundary.*

"The term 'State line' as defined in this Compact shall not be construed to define the actual boundary between the State of Texas and the State of Louisiana." (Emphasis Ours)¹⁰⁷

The result of this Compact is the Toledo Bend project, which has been most beneficial to both Texas and Louisiana.

Mr. John B. Carter, retired Chief, Location and Design Engineer, Louisiana Department of Highways, stated, that many of the bridges along the Sabine are owned in *undivided* ownership throughout their length. The first bridge at Orange was constructed

¹⁰⁷ Louisiana Exhibit A, Item 23. In the trial of this case Texas, in spite of the language contained in the compact, attempted to use acts executed under the compact to show acquiescence.

at practically the sole cost of Texas.¹⁰⁸ Mr. Carter further testified that in the negotiations between the respective highway officials, there was never any discussion of establishing or acquiescing in any mid-stream boundary between Louisiana and Texas.¹⁰⁹

These facts are not disputed by Mr. J. C. Dingwall, Texas State Highway Engineer, who stated that the bridges over the Sabine "were constructed with the State of Texas and the State of Louisiana each paying fifty per cent of costs . . ." ¹¹⁰

Until 1914 the City of Orange, Texas limits were fixed on the West bank of the Sabine. By ordinance passed November 10, 1914, the City Council of the City of Orange, Texas, for the limited purpose of securing land "by purchase, condemnation or gift for the improvement of navigation of said navigable streams or waters, either by the United States or by said City, or by any navigation or other improvement district, and for the purpose of establishing and maintaining wharves, docks, railway terminals, side tracks, warehouses or any other facilities or aids whatsoever to either navigation or wharves", attempted to extend its boundaries to include a portion of Sabine River.¹¹¹ As set forth in Section 4 thereof,

"... after the passage of said ordinance adding said territory to said city, said city shall have and exercise within said limits the fullest and

¹⁰⁸ Transcript, pp. 50-55.

¹⁰⁹ Transcript, pp. 55-56, 59-60.

¹¹⁰ Texas Exhibit B, Item 17.

¹¹¹ Texas Exhibit E, Item 17, pp. 53-54.

most complete *power of regulation of navigation and of wharfage and of wharfage rates and of all facilities, conveniences and aids to wharfage or navigation consistent with the Constitution of this State, and shall further have authority by criminal ordinances or otherwise, to police the navigation of said waters and the use of said wharves and facilities and aids to wharfage in navigation . . .*" (Emphasis Ours)¹¹²

Therefore, there seems to be no intent to take fee title ownership to the land underlying the portions of Sabine River over this extension of the boundary or city limit of Orange, Texas.

By ordinances dated November 24, 1955 and May 14, 1957,¹¹³ the City of Orange, Texas, attempted to annex territory adjoining the City of Orange for the purpose of making it a part thereof for municipal purposes. Texas, of course, claims that these are additional acts which show acquiescence on the part of Louisiana to its claim to a mid-stream boundary. However, both of these additional ordinances were passed some 15 years after Governor Jones placed Texas on notice of Louisiana's claim to the west bank of the Sabine in 1941, and, in fact, some years after Texas and Louisiana had informally agreed to await the settlement of its boundary, pending the outcome of the Tidelands litigation.

Under "A" in our argument, we mentioned various acts of the Legislature of Louisiana starting in

¹¹² Texas Exhibit E, Item 17, p. 54.

¹¹³ Texas Exhibit E, Item 17, pp. 57-63.

1848 asserting claims over the Sabine to the west bank.¹¹⁴

We respectfully urge that the undisputed facts do not sustain the findings of the Special Master that Louisiana lost title to the bed and subsoil of the west half of the Sabine.

POINT "C"

LOUISIANA TAKES EXCEPTION TO THE FINDINGS OF THE SPECIAL MASTER THAT THE "THALWEG DOCTRINE" DOES NOT APPLY. TEXAS MAINTAINED AND THE SPECIAL MASTER ERRONEOUSLY FOUND THAT THE BOUNDARY WAS IN THE GEOGRAPHIC MIDDLE OF THE SABINE.¹¹⁵

While Louisiana firmly asserts its boundary is on the west bank of the Sabine, nevertheless, if this Court holds otherwise, the boundary should be down the navigable channel on the west side of the most westerly island in the Sabine as it existed in 1812.

Texas must have considered that the thalweg rule applied for, as recently as August, 1946, Bascom Giles, Commissioner of the General Land Office and Chairman of the School Land Board, of Texas wrote to the State Mineral Board of Louisiana asserting that the thalweg rule applied as to the Sabine as a boundary between Texas and Louisiana.¹¹⁶

When Louisiana's boundary with Mississippi was

¹¹⁴ Louisiana Exhibit N (exhibits attached thereto).

¹¹⁵ Pp. 31-34, Report of Special Master.

¹¹⁶ Louisiana Exhibit B, Item 6, pp. 44-47.

in dispute,¹¹⁷ this Court applied the thalweg rule and made the following observations:

"If the doctrine of the thalweg is applicable, the correct boundary line separating Louisiana from Mississippi in these waters is the deep-water channel.

"The term 'thalweg' is commonly used by writers on international law in definition of water boundaries between states, meaning the middle, or deepest, or most navigable channel.

In *Iowa v. Illinois*, 147 U.S. 1, 37 L.Ed. 55, 13 Sup. Ct. Rep. 239, the rule of the thalweg was stated and applied. The controversy between the states of Iowa and Illinois on the Mississippi river, which flowed between them, was as to the line which separated 'the jurisdiction of the two states for the purpose of taxation and other purposes of government.' Iowa contended that the boundary line was the middle of the main body of the river, without regard to the 'steamboat channel' or deepest part of the stream. Illinois claimed that its jurisdiction extended to the channel upon which commerce on the river by steamboats or other vessels was usually conducted. This court held that the true line in a navigable river between states is the middle of the main channel of the river."

Mr. Justice Field, delivering the opinion of the court, said:

"When a navigable river constitutes the boundary between two independent states, the

¹¹⁷ *State of Louisiana v. State of Mississippi*, *supra*.

line defining the point at which the jurisdiction of the two separates is well established to be the middle of the main channel of the stream. The interest of each state in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest. It is therefore, laid down in all the recognized treaties of international law of modern times that the middle of the channel of the stream marks the true boundary between the adjoining states up to which each state will, on its side, exercise jurisdiction. In international law, therefore, and by the usage of European nations, the term 'middle of the stream', as applied to a navigable river, is the same as the middle of the channel of such stream, and in that sense the terms are used in the treaty of peace between Great Britain, France and Spain, concluded at Paris in 1763. *By the language, 'a line drawn along the middle of the River Mississippi from its source to the River Iberville,' as there used, is meant along the middle of the channel of the River Mississippi.*" (Emphasis Ours)

Texas relies on *State of Georgia v. State of South Carolina*, 257 U.S. 516, 42 S.Ct. 173, 66 L.Ed. 347 (1921), as did the Special Master.¹¹⁸ That case can easily be distinguished from the case at bar. There this Court was dealing with a boundary established by *convention*—the Beauford Convention of 1787. Louisiana's boundary, as stated in the Act of Admission of April 8, 1812,¹¹⁹ is "a line to be drawn along the

¹¹⁸ Pages 31-32, Report of Special Master.

¹¹⁹ 2 U.S. Stat. 701.

middle of said river, including all islands . . ." ¹²⁰ The only "treaty boundary" or convention-fixed line was that fixed in the Adams-onis Treaty of 1819; and that boundary line was on the *western bank* of the Sabine water system.

In the *Georgia* boundary case, *supra*, this Court made this observation:

"Thus, article II takes out of the case any influence which the thalweg, or main navigable channel, doctrine (*Iowa v. Illinois*, 147 U.S. 1, 13 Sup. Ct. 239, 37 L.Ed. 55; *Arkansas v. Tennessee*, 246 U.S. 158, 169, 170, 171, 38 Sup. Ct. 62 L.Ed. 638, L.R.A. 1918D, 258) might otherwise have had upon the interpretation to be placed on article I, by which the location of the line must be determined, and leaves the uncomplicated case of a boundary stream between two states quite unaffected by other considerations.

"Thus again we have the case of a stream for a boundary between two states and with the precise location of the boundary line unaffected by the thalweg doctrine, or by other circumstances, and again the rule must be applied that the division line is midway between the banks of the stream—here between the island bank on the one side and the South Carolina bank on the other—its precise position to be determined when the water is at its ordinary stage."

While the Special Master followed the *Georgia* case in denying the application of the thalweg rule

¹²⁰ West's Louisiana Statutes Annotated, Constitution (1812), p. 511, states ". . . including all *its* islands." (Emphasis ours).

in this case, he failed to follow the teaching of this Court in the same case to the effect that where there are islands in the river belonging to one state "the line must be between them and the South Carolina shore, for otherwise the Georgia islands would be in the State of South Carolina."

In the *Georgia* case the treaty provides "reserving all islands in said Savannah and Tugalo to Georgia." Here Louisiana is entitled to all of the islands in the Sabine. The Special Master found Louisiana is entitled to all islands in the Sabine that were there in 1812, yet he disregarded the holding in the *Georgia* case that Louisiana's boundary must be a line between the islands and the Texas shore.

Since it has been stipulated the Sabine River, Sabine Lake and Sabine Pass are one continuous body of navigable water, the same rule stated in the *Georgia* case applies irrespective in which body of water the islands appear. No distinction was made in the Sabine Pass, Sabine Lake and Sabine River in the Treaty of 1819 and in the various Acts admitting Louisiana into the Union.

If the statutory language of the 1812 Louisiana Constitution is to govern, we are dealing with a line drawn down the "middle" of the river, including all its "islands". This is quite different from the treaty language in the *Georgia* case. The "middle" has been interpreted by this Court, on many occasions, to mean the middle of the main navigation channel. This is

exactly the same language as is used in *State of Iowa v. State of Illinois*, 147 U.S. 1, 13 S.Ct. 239, 37 L.Ed. 55 (1892), and *State of Louisiana v. State of Mississippi*, supra. In fact, the latter case involved the self-same Constitution of Louisiana of 1812 that concerns us in the case at bar. In the case dealing with the Mississippi River the right of navigation was assured to all of the states, but this did not preclude this Court from applying the "Thalweg Doctrine" to the boundary of the states bounded by the Mississippi River.

Texas' contention was erroneously adopted by the Special Master¹²¹ that the whole basis for the thalweg rule is absent because of free navigation of the Sabine, is again refuted by *State of Arkansas v. State of Tennessee*, 246 U.S. 158, 38 S.Ct. 301, 62 L.Ed. 638 (1918). At page 305 the following language was used by this Court:

"There is controversy with respect to the application of the foregoing rule to the particular circumstances of this case. It is insisted in behalf of the State of Tennessee that *since the rule of the thalweg derives its origin from the equal rights of the respective States in the navigation of the river*, the reason for the rule and therefore the rule itself *ceases* when navigation has been rendered impossible by the abandonment of a portion of the river bed as the result

¹²¹ Pages 31-32, Report of Special Master.

of an avulsion. In support of this contention we are referred to some expressions of Vattel, Almeda, Moore, and other writers; *but we deem them inconclusive, and are of the opinion, on the contrary, that the contention runs counter to the settled rule and is inconsistent with the declarations of this court*, in *Nebraska v. Iowa*, 143 U.S. 359, 367, 12 Sup. Ct. 396, 399 (36 L.Ed. 186), that 'avulsion would establish a fixed boundary, towit: the center of the abandoned channel,' or, as it is expressed on page 370 of 143 U.S. on page 400 of 12 Sup. Ct. (36 L.Ed. 186), 'the boundary was not changed, and it remained as it was prior to the avulsion, the center line of the old channel,' and in *Missouri v. Nebraska*, 196 U.S. 23, 36, 25 Sup. Ct. 155, 158 (49 L.Ed. 372) *that the boundary line 'must be taken to be the middle of the channel of the river as it was prior to such avulsion'.*" (Emphasis Ours)

A late case entitled *Arkansas v. Tennessee*, 397 U.S. 88, 90 S.Ct. 784, 25 L.Ed. 2273, (1970),¹²² decided on February 25, 1970 concerned the doctrine of the thalweg which was admittedly applicable; the question being whether an avulsion had existed. This Court followed the middle of the old abandoned channel holding it to be the correct boundary.

Many decisions of this court and lower federal courts leave no doubt that the term "middle of the river," without any other qualification, refers to the "thalweg."¹²³

¹²² Supplemented 399 U.S. 219, 90 S.Ct. 2222, 26 L.Ed. 2d 537.

¹²³ *State of Minnesota v. State of Wisconsin*, 252 U.S. 273, 40 S.Ct. 313, 64 L.Ed. 558 (1920); *State of Wisconsin v. State*

Texas has made reference on several occasions to the fixing of the boundary in the appropriate geographic middle of Sabine Pass, Lake and River. However, it fails to take notice of the maps prepared in conjunction with the survey of 1840-41, which show the various channels where Sabine River enters Sabine Lake.¹²⁴

In the affidavit of Mr. Robert Lyddan, Chief Topographic Engineer of the U. S. Geological Survey, Department of the Interior,¹²⁵ he refers to the boundary line as portrayed on geological survey maps. It is important to note that Mr. Lyddan, in positioning the so-called boundary, relied on the book entitled "Boundaries of United States and the Several States". In this pamphlet reference is made to the authority of Congress to permit Texas to extend its jurisdiction and the extension of the jurisdiction by Texas. Clearly, Mr. Lyddan was in no position to interpret the legal effect of these acts since there were no court decisions interpreting them. He no doubt felt as a government employee he was bound to follow the wording thereof.

Nonetheless, the Port Arthur Quadrangle prepared by the U. S. Geological Survey, 1957 Edition, also referred to by Mr. Robert A. Bowers in his affi-

of Michigan, 295 U.S. 455, 55 S.Ct. 786, 79 L.Ed. 1541 (1935); *Sherrill v. McShan*, 356 F.2d 607, (Ninth Cir., 1966); *Anderson-Tully Company v. Tingle*, 166 F.2d 224, (Fifth Cir., 1948); *Iselin v. LaCoste*, 139 F.2d 887, (Fifth Cir., 1944); *Anderson-Tully Company v. Franklin*, 307 F. Supp. 539 (N.D., Miss., 1969); and *Anderson-Tully Company v. Walls*, 266 F. Supp. 804, (N.D., Miss., 1967).

¹²⁴ Louisiana Exhibit K, Item 1; Appendix "A", Item 5.

¹²⁵ Texas Exhibit G, Item 3.

davit of August 31, 1970, clearly shows that the position of the boundary line at the Lake was not placed at the geographic middle of the River, but in Middle Pass, which completely ignored West Pass of the Sabine River, as shown on the map of the survey of the Joint Commission.

There were four passes at the point where Sabine River enters Sabine Lake.¹²⁶ As held by the Interior Department in the 1910 case involving the "Narrows", Louisiana was and is entitled to the "west bank of the west branch". If this Court recognizes Texas' claim to the "geographic middle" of the Sabine, the boundary should still be drawn in the westernmost pass.¹²⁷ This would be in keeping with this Court's holding in the *Georgia* case.

The affidavit of R. C. Wisdom, states that "for the purpose of these calculations the location of the boundary line between the western and eastern halves of Sabine Pass, Sabine Lake and Sabine River has been taken as the geographic middle, equi-distant from the east and west banks and shores, *as they existed on the earliest maps available.*"¹²⁸ Mr. Wisdom also uses the erroneous boundary line at the north end of Sabine Lake as shown on the U. S. Geological survey of 1957 described as the Port Arthur Quad-

¹²⁶ Louisiana Exhibit K, Items 1 (p. 2), 7, 12 (p. 20), and 18 (p. 23); also, Louisiana Exhibit N(a), particularly sheet 18 of 21 sheets attached thereto.

¹²⁷ Louisiana Exhibit N(a), Sheet 18, clearly shows the westernmost channel as navigable with water depths of approximately nine (9) feet.

¹²⁸ Texas Exhibit G, Item 1, p. 1.

range. Had Mr. Wisdom been familiar with the "Map of the River Sabine from its Mouth in the Gulf of Mexico in the Sea" prepared by the Joint Commission, he would have seen that the boundary was on the west bank of West Pass, not in the middle of Middle Pass.

The Special Master determined "the thalweg doctrine does not apply 'when it is established that there has been acquiescence in a long-continued and uninterrupted assertion of dominion and jurisdiction over a given area.' *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1940). See also *Arkansas v. Tennessee*, 246 U.S. 158, 170 (1918); *Iowa v. Illinois*, 147 U.S. 1, 10 (1893)." ¹²⁹ He then went on to hold "that the boundary be established as the geographic middle of the river," and the doctrine of acquiescence and prescription applies with reference to what may be termed the west half of the river, as shown by leases, building of bridges and other acts discussed in his report.

We respectfully suggest that the three opinions cited by the Special Master to sustain the doctrine of acquiescence to a geographical mid-stream boundary instead of the thalweg in the Sabine are inapposite and, as a matter of fact, sustain the position of Louisiana.

In the case of *State of Arkansas vs. State of Ten-*

¹²⁹ Pp. 32-33, Report of Special Master; also, Louisiana Exhibit B, Item 8 (Letter of December 14, 1964 from Mr. Jerry Sadler, Commissioner of the General Land Office of Texas, to Mr. C. J. Bonnacarrere, Executive Secretary of the State Mineral Board of Louisiana, that there had been a long-standing dispute over the boundary).

nessee, *supra*, decided in 1940, this Court, after finding that Tennessee had continuously exercised dominion and jurisdiction over the area in question from the year 1826 until the time of the suit and that there was no showing Arkansas ever asserted any claim to the land in controversy prior to the institution of the suit, went on to say:

"On behalf of Arkansas it is argued that the rule of the thalweg is of such dominating character that it meets and overthrows the defense of prescription and acquiescence. That position is untenable. The rule of the thalweg rests upon equitable considerations and is intended to safeguard to each State equality of access and right of navigation in the stream. *Iowa v. Illinois*, 147 U.S. 1, 7, 8, 13 S.Ct. 239, 241, 37 L.Ed. 55; *Minnesota v. Wisconsin*, 252 U.S. 273, 281, 282, 40 S.Ct. 313, 318, 319, 64 L.Ed. 558; *Wisconsin v. Michigan*, 295 U.S. 455, 461, 55 S.Ct. 786, 788 79 L.Ed. 1541; *New Jersey v. Delaware*, 291 U.S. 361, 380, 54 S.Ct. 407, 413, 78 L.Ed. 847. The rule yields to the doctrine that a boundary is unaltered by an avulsion and in such case, in the absence of prescription, the boundary no longer follows the thalweg but remains at the original line although now on dry land because the old channel has filled up. *Nebraska v. Iowa*, 143 U.S. 359, 367, 12 S.Ct. 396, 398, 36 L.Ed. 186; *Missouri v. Nebraska*, 196 U.S. 23, 36, 25 S.Ct. 155, 157, 49 L.Ed. 372; *Arkansas v. Tennessee*, *supra*, 246 U.S. pages 173, 174, 38 S.Ct. 304, 305, 62 L.Ed. 638, L.R.A. 1918D, 258. And, in turn, the doctrine as to the effect of an avulsion may become inapplicable when it is established that there

has been acquiescence in a long-continued and uninterrupted assertion of dominion and jurisdiction over a given area. Here that fact has been established and the original rule of the thalweg no longer applies."

In the case now before this Court we are not confronted with dry land formed by avulsion as in the Arkansas case.

In the other case of *State of Arkansas v. State of Tennessee*, supra, decided in 1918, this Court considered another portion of the boundary between Arkansas and Tennessee and held:

"(1) The true boundary line between the States, aside from the question of the avulsion of 1876, is the middle of the main channel of navigation as it existed at the Treaty of Peace concluded between the United States and Great Britain in 1783, subject to such changes as have occurred since that time through natural and gradual processes.
and

"(2) By the avulsion of 1876 the boundary line between the States was unaffected, and remained in the middle of the former main channel of navigation, as above defined."

This decision was made in spite of the fact that both Arkansas and Tennessee had interpreted the line to be at a point equidistant between the well defined and permanent banks of the River. In making this determination, this Court said:

"It is said that Arkansas has interpreted the line to be at a point equidistant from the

well-defined and permanent banks of the river, that Tennessee likewise has recognized this boundary, and that by long acquiescence on the part of both States in this construction, and the exercise of jurisdiction by both in accordance therewith, the question should be treated as settled. The reference is to certain judicial decisions, and two acts of legislation. In *Cessill v. State* (1883) 40 Ark. 501, which was a prosecution for unlicensed sale of liquors upon a boat anchored off the Arkansas shore, it was held that the boundary line, as established by the original treaties and since observed in federal legislation, state constitutions, and judicial decisions was the 'line along the river bed equidistant from the permanent and defined banks of the ascertained channel on either side.' This was followed in subsequent decisions by the same court. *Wolfe v. State* (1912) 104 Ark. 140, 143, 148 S.W. 641; *Kinnanne v. State* (1913) 106 Ark. 286, 290, 153 S.W. 262. The first pertinent decision by the Supreme Court of Tennessee is *State v. Pulp Co.* (1907) 119 Tenn. 47, 104 S.W. 437, in which a similar conclusion was reached, partly upon the ground that it had been adopted by the courts of Arkansas. The legislative action referred to consists of two acts of the General Assembly of the State of Tennessee (Acts 1903, p. 1215, ch. 420; Acts 1907, p. 1723, ch. 516), each of which authorized the appointment of a commission to confer and act with a like commission representing the State of Arkansas to locate the line between the States in the old and abandoned channel at the place that we now have under consideration; and the Act of 1907 further provided that if Arkansas should fail to appoint a

commission the Attorney General of Tennessee should be authorized to institute a suit against that State in this court to establish and locate the boundary line. These acts, far from treating the boundary as a line settled and acquiesced in, treat it as a matter requiring to be definitely settled, with the co-operation of representatives of the sister State if practicable, otherwise by appropriate litigation.

"The Arkansas decisions had for their object the establishment of a proper rule for the administration of the criminal laws of the State, and were entirely independent of any action taken or proposed by the authorities of the State of Tennessee. They had no particular reference to that part of the river bed that was abandoned as the result of the avulsion of 1876; on the contrary, they dealt with parts of the river where the water still flowed in its ancient channel. The decision of the Supreme Court of Tennessee in *State v. Pulp Co.*, 119 Tenn. 47, 104 S.W. 437, sustained the claim of the State to a part of the abandoned river bed which, by the rule of the thalweg, would be without that State. *The combined effect of these decisions and of the legislation referred to, all of which were subsequent to the year 1876, falls far short of that long acquiescence in the practical location of a common boundary, and possession in accordance therewith, which in some of the cases has been treated as an aid in settling the question at rest.* *Rhode Island v. Massachusetts*, 4 How. 591, 638, 639, 11 L.Ed. 1116; *Indiana v. Kentucky*, 136 U.S. 479, 510, 514, 518, 10 Sup. Ct. 1051, 34 L.Ed. 329; *Virginia v. Tennessee* 148 U.S. 503, 522, 13

Sup. Ct. 728, 37 L.Ed. 537; *Louisiana v. Mississippi*, 202 U.S. 1, 53, 26 Sup. Ct. 408, 571, 50 L.Ed. 913; *Maryland v. West Virginia*, 217 U.S. 1, 41, 30 Sup. Ct. 268, 54 L.Ed. 645."

In the case of *State of Iowa v. State of Illinois*, 147 U.S. 1, 13 S.Ct. 239, 37 L.Ed. 55 (1892), this Court was faced with the question of establishing the boundary in the Mississippi River between Iowa and Illinois. This Court held:

"It is therefore ordered, adjudged, and declared that the boundary line between the state of Iowa and the state of Illinois is the middle of the main navigable channel of the Mississippi river . . ."

Iowa contended that the boundary line was in the middle of the main body of the river, taking the middle line between its banks or shores without regard to the "steamboat channel." On the other hand, Illinois claimed that its jurisdiction extended to the middle of the "steamboat channel" of the river, wherever that may be, whether on the east or west bank. This Court then, in substance, held: The expressions, "middle of the Mississippi river" and "the center of the main channel of the river," as used respectively in the enabling acts under which the states of Illinois and Wisconsin were admitted into the Union, and "middle of the main channel of the Mississippi river" as used in the enabling acts of Missouri and Iowa, all being descriptive of the boundaries of those states, are synonymous terms, and mean the middle of the main navigable channel, or channel most used, and

not the middle of the great bed of the stream, as defined by the banks of the river.

The Court will recall the Preamble of the Constitution of Louisiana of 1812 provides "beginning at the mouth of the river Sabine, thence by line to be drawn along the *middle of said river*. . . ." (Emphasis Ours) This Court in the Iowa case held the "middle of the Mississippi River" meant the middle of the main navigation channel.

Texas has made it clear, since the Special Master filed his report, why it wants its boundary in the geographical middle of the Sabine. Texas wants to use this mid-stream boundary as a point from which to extend the boundary into the Gulf of Mexico to acquire from Louisiana both sides of the Sabine Jetties and other areas to the east of the jetties, all of which Texas would not acquire under the "Thalweg Doctrine", and most of which has been in the control and possession of Louisiana.

The Special Master erred in not applying the "Thalweg Doctrine" in this case and that, where islands exist, the boundary should be between the islands and the Texas shore.

POINT "D"

THE SPECIAL MASTER WAS CORRECT IN RULING LOUISIANA OWNS ALL THE ISLANDS IN THE WEST HALF OF THE SABINE THAT EXISTED IN 1812, BUT WAS IN ERROR IN RULING LOUISIANA COULD LOSE THE IS-

**LANDS BY ACQUIESCENCE AND EROSION.
LOUISIANA OWNS ALL THE ISLANDS IN THE
SABINE WHETHER THEY WERE THERE BE-
FORE 1812 OR HAVE BEEN FORMED SINCE.**

When Louisiana was admitted as a state in 1812 its Constitution provided Louisiana owned all the islands in the Sabine. This has been so held by the Special Master in his report.¹⁸⁰

This has been recognized by Texas for on November 25, 1941, Mr. Bascom Giles, Commissioner of General Land Office of Texas, in his letter to Governor Jones said:

"It has come to my attention that you are contending that possibly the State of Louisiana has title to all of the Sabine River bed. The United States Department of the Interior, by letter dated June 4, 1937, advised the General Land Office of the State of Texas that the center of the Sabine River from its mouth to the 32° of latitude was the boundary line between Texas and Louisiana. Since it is my duty to administer and conserve the public lands of the State of Texas, I have made a rather extensive investigation into the extent of your claim. *This investigation convinces me that the State of Texas has title to the west one-half of the Sabine River bed exclusive of the islands therein.*" (Emphasis Ours)

Surely Texas did not doubt in 1941 that Louisiana owned *all* islands in the Sabine, regardless of what side of the stream they appeared, and whether

¹⁸⁰ Page 35, Report of Special Master.

they existed before or after 1812. This was written at the time Governor Jones put Texas on official notice of Louisiana's claim to the soil and subsurface of the Sabine to the west bank.

It was only after the present case was filed and after the first hearing before the Special Master that Louisiana became aware that Texas was claiming islands in the west half of the Sabine.

Louisiana had no knowledge that Texas laid any claim to the "Shell Island" in the mouth of Sabine Lake until on the trial of this case when such a claim was advanced, but Texas has changed its position and now admits it does not make any claim to "Shell Island."

The Treaty of 1819, the ruling of the Department of Interior in 1910 on the "Narrows", Louisiana's Constitution of 1812, and the interpretation by Mr. Giles, all establish Louisiana's title to all of the islands in the Sabine.

These assertions by Texas illustrate the fact that Texas never had a clear understanding as to a boundary between it and Louisiana, although in this proceeding it urges that at all times there was a definite understanding that a mid-stream boundary existed.

When Louisiana was admitted as a State of the Union in 1812, as we have previously mentioned, all public lands remained in the United States. The title to the beds of navigable streams vested in Louisiana.¹³¹

¹³¹ Louisiana Exhibit P, particularly (n).

Mr. Ray Wisdom in his testimony made several references and discussed title to the islands formed by the forks of Sabine River as it enters Sabine Lake, especially the islands northwest of Middle Pass as shown on the Port Arthur Quadrangle (1957), which Pass is also sometimes designated as Middle Fork or West Fork.¹²² Louisiana acquired public lands from the United States under the various Swamp Lands Acts and, more particularly, those islands to which Mr. Wisdom was referring. This particular area referred to by Mr. Wisdom was transferred by the United States to Louisiana, as follows:

1. A fractional Section 36, Township 12 South, Range 15 West was approved to Louisiana by the Secretary of Interior on January 23, 1930, list 229. This area includes the extreme West Fork and is called "2d West Fork" on the Township Plat.
2. Fractional Section 31, Township 12 South, Range 14 West; fractional Section 6, Township 13 South, Range 14 West; and fractional Section 1, Township 13 South, Range 15 West, were approved to Louisiana on May 5, 1852 under the Swamp Lands Act of March 2, 1849.

Included in the second grouping above is the island referred to by several of Texas' witnesses as "Shell Island".¹²³ Prior to the transfer of these islands to Louisiana, they were surveyed by U. S. Deputy Sur-

¹²² Transcript, pp. 568-576.

¹²³ Louisiana Exhibit R(a-b).

veyor Thomas Bilbo, in the third quarter of 1838, and found to be in Louisiana.

The various maps introduced in evidence show Shell Island in Louisiana,¹³⁴ except for Texas Exhibits CC and DD, which are maps of Orange County, Texas, dated 1862 and 1897. These maps show no mid-stream boundary and, in fact, the heavy, darker line, which is usually used to indicate boundary, is placed on each of the maps on the western bank of the Sabine. These maps also show the island formed by the two channels of the Sabine at the "Narrows" as being in Texas. This island, of course, in the "Narrows" ruling in 1910, was determined to be in Louisiana and which ruling has been acquiesced in by Texas.

Attached to Mr. Bowers' affidavit¹³⁵ as Exhibit B is a section of the 1900 U. S. Coast & Geodetic Survey map, which taken together with later editions of the same map submitted with his affidavit as Exhibits C and D,¹³⁶ is U. S. Coast Survey Chart No. 517. This Chart No. 517 depicts John's Island in Sabine Lake, near the confluence of the Neches River, as a land area *above the high water line* and is so shown on all subsequent editions as being land above the high water line either under the name John's Island or as Doom's Island.

¹³⁴ John C. Tracy and H. D. Cox conveyed to the United States for the construction of the Sabine-Neches Channel, by deed dated May 23, 1912, portions of Fractional Section 36, Township 12 South, Range 15 West, and Section 1, Township 13 South, Range 15 West, being lands in the area of Little West Pass and Middle Pass of the Sabine and located in Cameron Parish, Louisiana. See Louisiana Exhibit R(c).

¹³⁵ Texas Exhibit J, p. 7.

¹³⁶ Texas Exhibit J, pp. 8-9.

In Shalowitz, *Shore and Sea Boundaries*, Vol. 2, Appendix F, pp. 327-328, figures 9 and 10 describe symbolization of the high and low water lines used on nautical charts prepared by the Coast Survey. On p. 327 thereof it is stated, "the high water line, which is the dividing line between land and sea, was always prominently displayed on the nautical chart as the heaviest, continuous black line inside the neat line . . . where the high water line is unsurveyed, a heavy, black dashed line is used."

John's Island or Doom's Island has always been shown on Coast Survey Charts 517 and 1279 as a land area above mean high water. Because of the foregoing, we assert that John's or Doom's Island is a true island in the Sabine.

On the map of Sabine-Neches Canal, Texas, dated March 5, 1910,¹³⁷ three islands are shown near the mouth of Taylor's Bayou. On the map of Port Arthur Ship Canal,¹³⁸ dated December, 1909, one of these three islands is clearly evident just north of the point where Taylor's Bayou intersects the Port Arthur Canal and enters Sabine Lake. Additionally, on the map of Sabine Pass and Lake, dated April, 1901,¹³⁹ two of the islands referred to above are clearly shown near the point where Taylor's Bayou enters Sabine Lake. There were large shell bank islands in Sabine Pass at the time of the survey by the Joint Commission (1840),¹⁴⁰

¹³⁷ Louisiana Exhibit K, Item 13, pp. 22-23.

¹³⁸ Louisiana Exhibit K, Item 9, pp. 15-16.

¹³⁹ Louisiana Exhibit K, Item 7, p. 12.

¹⁴⁰ Louisiana Exhibit K, Item 3, p. 5; Item 4, p. 6.

which are shown on maps which we have introduced into evidence dated about 1910.¹⁴¹

In considering the islands and Texas' early efforts towards dredging a channel along Sabine Lake, it is important to consider that the channel, to a large extent, was located on private rights of way west of the west bank of the Sabine Lake.¹⁴² Later there was dredging in Sabine Lake under authority of the U.S. Corps of Engineers. Louisiana did not lose the area of the islands by this dredging.

The Convention on the Territorial Sea and Contiguous Zone, which was adopted by the United States, in defining what constitutes islands, in Article 10 provided:

"Art. 10"

"10. An Island is a naturally formed area of land, surrounded by water, which is above water at high tide."

As long as an island is naturally formed, there is nothing in the above Article which requires that the island be formed of any particular material, whether sand, gravel or dirt. The Special Master was in error in holding shell banks and oyster reefs are not islands even if they meet the above test.¹⁴³

We respectfully suggest Louisiana owns all the islands in the Sabine whether they were there in 1812 or formed later, and that Louisiana has not lost title

¹⁴¹ Louisiana Exhibit K.

¹⁴² Louisiana Exhibit K, Item 7, 8, 9, and 10.

¹⁴³ Page 37, Report of Special Master.

to the islands or the area of the islands by acquiescence or erosion.

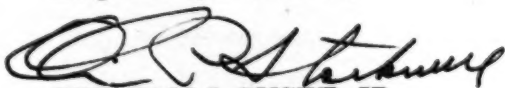
ORAL ARGUMENT

In view of the importance of this case to both States, we respectfully suggest it should be fixed for oral argument.

CONCLUSION

We respectfully urge that Louisiana's boundary should be recognized by this Court on the West bank of the Sabine from the Gulf of Mexico to the 32° of North latitude as surveyed and staked in 1839-41 so as to coincide with Louisiana's boundary from the 32° of North latitude to the 33° of North latitude and that Louisiana's title to all of the islands be recognized whether they existed in 1812 or were formed at a later date.

Respectfully submitted,



WILLIAM J. GUSTE, JR.,
Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

EDWARD M. CARMOUCHE,
Special Assistant Attorney General.

SAM H. JONES,
Special Assistant Attorney General.

JACOB H. MORRISON,
Special Assistant Attorney General.

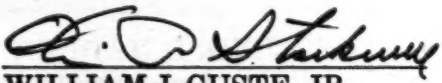
EMMETT C. SOLE,
Special Assistant Attorney General.

OLIVER P. STOCKWELL,
Special Assistant Attorney General.

Attorneys for defendant.

CERTIFICATE

I, WILLIAM J. GUSTE, JR., Attorney General of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 1st day of July, 1972, I served copies of the foregoing brief by transmitting conformed copies of the same, by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General of the United States, in compliance with Rule 33.2(b) of the Rules of the Supreme Court of the United States, since the Report of Special Master has raised the question of the constitutionality of an Act of Congress of July 5, 1848 (9 U.S. Stat. 245).


For: WILLIAM J. GUSTE, JR.,
Attorney General,
State of Louisiana.

INDEX TO APPENDIX

*Description**Item
Number*

1. Resolution No. 212 of the Legislature of Louisiana, approved March 16, 1848.
2. Affidavit of the Honorable Sam Houston Jones, former Governor of the State of Louisiana, to which is attached copies of correspondence in 1941 by and between his office and certain officials of the State of Texas with regard to Louisiana's claim that its boundary was and is fixed on the west bank of the Sabine.
3. Letter from President John Quincy Adams to the House of Representatives of the United States, 15th January, 1828, and letter from Henry Clay, Secretary of State, dated January 14, 1828, referred to by President Adams in response to a resolution of Congress.
4. Article entitled "Texas Law Rules East Jetty Now", which appeared in the Beaumont Enterprise, Beaumont, Texas, on Saturday, June 17, 1972, of which this Court can take judicial notice.
5. Map of the River Sabine from its mouth on the Gulf of Mexico in the sea to Logan's Ferry showing points as marked and laid down by survey in 1840 under the direction of the Commissioners appointed for that purpose under the First Article of the Convention signed at Washington April 25, 1838,

which is referred to in Louisiana Exhibit A, Items 13 and 14 (Senate Document No. 199, 27th Congress, 2d Session).

APPENDIX "A"

Item No. 1

RESOLUTION

"No. 212.]

WHEREAS, the Constitution and the Laws of the State of Louisiana, nor those of any other State or Territory, extend over the waters of the Sabine River, from the middle of said stream to the western bank thereof; and that it is of importance to the citizens living contiguous thereto, and to the people in general, that the jurisdiction of some State should be extended over said territory, in order that crimes and offenses committed thereupon should be punished, and wrongs and damages inflicted should be redressed in a speedy and convenient manner:

Therefore, be it resolved, by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened: 1st, That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto), viz.: Between the middle of the Sabine river and the western banks thereof, to begin at the mouth of said river, where it empties into the Gulf of Mexico, and thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the State of Texas.

2d, Be it further resolved, etc.: That our Senators be instructed, and our Representatives in Congress requested, to procure the passage of a law on the part of the United States, consenting to the extension of the constitution, and the jurisdiction of the laws of the State of Louisiana, over the territory in said river.

3d, And be it further resolved, etc.: That the Governor of the State be requested to forward a copy of these resolutions to each of our Senators and Representatives in Congress.

/s/ PRESTON W. FARRAR,
Speaker of the House of Representatives.

/s/ TRASIMON LANDRY,
Lieutenant Governor and President of the
Senate.

Approved March 16, 1848.

/s/ ISAAC JOHNSON,
Governor of the State of Louisiana."

Item No. 2**STATE OF LOUISIANA
PARISH OF CALCASIEU**

BEFORE ME, the undersigned authority, a Notary Public duly commissioned and qualified in and for the aforesaid Parish and State,

PERSONALLY CAME AND APPEARED:

HONORABLE SAM HOUSTON JONES, of age and a resident of the Parish of Calcasieu, Louisiana who, after having been duly sworn did depose and say that:

He was Governor of the State of Louisiana in 1941 and was interested in the question of the correct location of the boundary between the States of Louisiana and Texas. Eugene Stanley was Attorney General at the time; and Jacob H. Morrison was acting as a Special Assistant Attorney General in connection with said matter.

Deponent annexes hereto and makes part hereof a copy of a letter addressed to the Governor of Texas which letter was signed by him, Attorney General Stanley and Jacob H. Morrison. It was mailed on or about November 27, 1941. The reason the date does not appear on the copy is that said letter was drafted by Jacob H. Morrison and mailed from his office in New Orleans to my office in Baton Rouge, the state capitol. It was signed by Attorney General Stanley and myself in Baton Rouge on or about November 27, 1941; and was promptly mailed to the Governor of Texas.

Deponent further says that he received from Honorable Bascom Giles, Commissioner of the General Land Office of Texas a letter dated November 25th, 1941, copy of which is annexed hereto and made part hereof.

Deponent further says that in response to said letter, a reply was drafted by Jacob H. Morrison and mailed to him in Baton Rouge for his signature. He signed said letter and mailed it to Mr. Giles on or about December 17, 1941. The reason he knows this is that he wrote Mr. Morrison on December 17, 1941 advising him of this fact. A copy of said letter is annexed hereto and made part hereof.

/s/ SAM HOUSTON JONES

Sworn to and Subscribed
before me this 30th day
of September, 1970.

/s/ DOROTHY BRASWELL
Notary Public

C O P Y

The Honorable Governor of the State of Texas,
State Capitol Building,
Austin, Texas.

Dear Sir:

I am writing you in the interest of setting at rest all doubts that may exist as to the correct boundary between the states of Louisiana and Texas. The true

boundary between our respective states is the western bank of the continuous body of water known as Sabine Pass, Sabine Lake and Sabine River from the Gulf up to the 32nd degree of latitude, and thence due north to the Louisiana-Arkansas boundary.

Some confusion has been created by the erroneous idea entertained in some quarters that the *middle* of Sabine Pass, Lake and River is the right boundary. This has no basis in law or fact.

In order that you may have before you for ready reference the pertinent statutes and decisions on this question, I call your attention to the following:-

By the treaty of February 22, 1819 between the United States of America and the King of Spain (8 U.S. Statutes at Large 252), the limits between the United States of America and the then Territories of the King of Spain in North America were fixed at a line beginning on the Gulf of Mexico at the mouth of the River Sabine, and continuing north along the western bank of that river (Sabine Pass, Sabine Lake and Sabine River proper) to the 32nd degree of latitude. The boundary then followed a line running due north from the last named point to the southern bank of Red River.

By the Treaty of Limits, dated January 12, 1828, between the United States of America and the United Mexican States, the same boundary was adopted (see 8 Statutes at Large, Page 372). By an act dated December 19, 1836, the Republic of Texas ratified the same boundary as that prescribed theretofore in the

treaties of February 22, 1819 (between Spain and the U.S.) and January 12, 1828 (between Mexico and the U. S.).

By an act of Congress of July 5, 1848 (U. S. Statutes at Large, 30th Congress (1848), First Session, Chapter 94), the United States sought to extend the eastern boundary of the State of Texas so as to include one-half of Sabine Pass, Sabine Lake and Sabine River up to the 32nd degree of latitude. This act is clearly unconstitutional under the doctrine of *Louisiana vs. Mississippi*, 202 U. S. 1; 26 Sup. Ct. 408; decided in 1906.

In the several cases involved in the litigation between the states of Oklahoma and Texas, the Supreme Court of the United States held definitely that the boundaries as delineated by the Treaty of 1819 between Spain and the United States were effective and controlling. Accordingly, the Supreme Court held that the western bank of Sabine Pass, Sabine Lake and Sabine River and the southern bank of Red River were the correct boundaries.

To this effect, see:-

United States v. Texas, 162 U.S. 1; 16 Supreme Court 725;

Oklahoma v. Texas, 356 U.S. 70; 41 Supreme Court 420;

Oklahoma v. Texas, 256 U.S. 682; 41 Supreme Court 539;

Oklahoma v. Texas, 258 U.S. 574;

Oklahoma v. Texas, 260 U.S. 606;

United States v. Choctaw & Chickasaw Nations, 179 U.S. 494.

The boundary line between the State of Louisiana and the State of Texas was actually located, laid out and marked upon the earth by commissioners appointed in 1839 respectively by the United States and the then Republic of Texas. The limits as established by the successive treaties of 1819, 1828 and 1836 were strictly adhered to. The commissioners completed their work in 1841.

You have probably observed in the press some comment on an alleged error in the survey establishing that portion of the boundary running from the 32nd parallel (where the Sabine ceases to be the boundary) up to the Arkansas-Louisiana Line (the 33rd parallel of north latitude). I am not in a position to discuss the engineering phases of the matter. What I can and do say is that, regardless of any error that may have been committed in running this portion of the line (which error I do not admit but expressly disclaim), the actual boundary as physically laid out on the ground and as adhered to for the past century by the citizens of both states adjoining it would govern and control.

As Governor of the State of Louisiana, and under the authority in me vested by the Constitution and Statutes of this State, I hereby make formal demand for the recognition by the State of Texas, as the true and correct boundary between our respective states, of the western bank of Sabine Pass, Sabine River and

Sabine Lake up to the 32nd parallel, and of the line between the 32nd and 33rd parallel of north latitude as established by the joint commission in 1839-41 and as adhered to by the citizens of both states adjoining it.

The Attorney General joins me in this letter, as will appear by his official signature hereto.

Yours respectfully,

Governor, State of Louisiana

Attorney General, State of Louisiana

Special Assistant to the Attorney
General of the State of Louisiana

C O P Y

GENERAL LAND OFFICE
State of Texas
Austin

November 25, 1941

BASCOM GILES, Commissioner
Alvis Vandygriff, Chief Clerk
Honorable Sam Jones, Governor
State of Louisiana
Baton Rouge, La.

Dear Governor Jones:

It has come to my attention that you are contend-

ing that possibly the State of Louisiana has title to all of the Sabine River bed. The United States Department of the Interior, by letter dated June 4, 1937, advised the General Land Office of the State of Texas that the center of the Sabine River from its mouth to the 32° of latitude was the boundary line between Texas and Louisiana. Since it is my duty to administer and conserve the public lands of the State of Texas, I have made a rather extensive investigation into the extent of your claim. This investigation convinces me that the State of Texas has title to the west one-half of the Sabine River bed exclusive of the islands therein.

It is possible that you have overlooked the following facts:

1. The west boundary of Louisiana was fixed by the Act of April 8, 1812, admitting said State into the Union and is described as follows:

"Beginning at the mouth of the River Sabine; thence, by a line drawn along the middle of said River including all islands to the 32° of latitude; thence due north to the northernmost part of the 33° of north latitude."
(2 Stat. 701)

2. On February 22, 1819, after Louisiana had been admitted to the Union, the United States entered into a treaty with Spain to fix the boundary line between the Spanish territory that is now Texas and the United States. This treaty fixes the boundary line of the United States at that time as follows:

"Beginning at the mouth of the River Sabine

in the sea, continuing north along the western bank of that River to the 32° of latitude; thence due north to the 33° of latitude." (8 Stat. 252)

3. Mexico, the Republic of Texas, and the State of Texas, who succeeded Spain as sovereign of the lands to the west of the Sabine River, each ratified the boundary as set out in the Treaty of 1819. (8 Stat., 372; 8 Stat., 511.)

4. On July 5, 1848, after Texas was admitted to the Union, the Congress of the United States realizing that it had never relinquished the title to the west one-half of the Sabine River which it had obtained from Spain in 1819, gave Texas permission to extend its eastern boundary to the middle of the Sabine River from its mouth as far north as the 32° of latitude. (9 Stat., 245)

5. Texas acted immediately to take advantage of this permission and on November 24, 1849, the Legislature of the State of Texas passed an act extending the limits of the State of Texas to the center of the Sabine River from its mouth to where the River intersects the 32° of latitude. (Act of Nov. 24, 1849, 3 Gam. Laws of Texas. Pg. 442.)

It can readily be seen that the State of Louisiana is bound by the limits placed on it when it was admitted into the Union in 1812. Its boundaries then did not extend beyond the middle of the Sabine River and this boundary has never been changed. The west one-half of this River which you have claimed remained the property of the United States of America until it so graciously consented for the State of Texas to extend

its boundaries and include this area. For more detailed information I refer you to Geological Survey Bulletin 817.

I would like to point out, however, that my investigation into the boundary line between our two States has revealed an interesting situation between the 32° of latitude and the 33° of latitude. It appears that there is a strip approximately 150 feet in width and 70 miles long between the marked boundary of Texas of 1838 and the actual boundary of Louisiana as fixed in 1812, which is not owned by the State of Louisiana but is quite possibly owned by the State of Texas. This strip extends from Joaquin, Texas, opposite Logansport, Louisiana, to the Arkansas-Louisiana line and contains about 1300 acres.

This situation arises from the fact that in 1838 the Republic of Texas and the United States of America entered into a convention by which the boundary between the Republic of Texas and the United States was affirmed as being that agreed upon between Spain and the United States in 1819. Pursuant to this Convention of 1838 a Boundary Commission was appointed between the two Nations and the boundary as then existing was surveyed and marked on the ground. This line ran along the western bank of the Sabine River to the 32° of latitude and then turned due north. Since the boundary of Louisiana was previously fixed as running up the middle of Sabine River to the 32° of latitude, thence due north to the northernmost part of the 33° of latitude, it is evident that the line as surveyed on the ground in 1838 did not and could not coin-

cide with the boundary of the State of Louisiana, as fixed in 1812, by the width of one-half of the River.

To illustrate this point, I am enclosing a blue print of a sketch prepared by this office based on the original maps filed here by the Boundary Commission of 1838. You can at once see that there is a discrepancy between the Louisiana boundary line running due north from the center of the Sabine River at the 32° parallel and the boundary of Texas as surveyed and marked running north from the western bank of the Sabine River. Conceding that the Sabine River is only 300 feet wide at the point it intersects the 32° of latitude, the strip between the boundary line of Louisiana and the old surveyed boundary line of 1838 would be approximately 150 feet wide. I would like to point out, however, as reflected by the original surveyor's maps, that it is quite possible that the Sabine River is much wider at this point because of overflows and swampy land which might increase this strip to as much as a mile.

It is true that the Congress of the United States did not expressly mention this strip when it authorized Texas to take over the west one-half of the Sabine River, but we feel that they intended that the same be done since it follows as a natural corollary of moving the boundary of Texas from the west bank of the Sabine River to the middle of that River.

Because of the strong implications that this territory belongs to the State of Texas, I have examined all of the information I have been able to obtain on this matter and have transmitted it to Senators Tom Con-

nally and W. Lee O'Daniel of Texas so that they may take whatever action they think expedient to protect any rights the State of Texas might have in this strip.

In addition to the above mentioned blue print, I am enclosing the following instruments:

1. Certified photostatic copy of Sheet No. 1 of the map of a part of the boundary between the Republic of Texas and the United States of America drawn from notes of survey made by the Joint Commission under the Convention of the 25th of April, 1838.
2. Certified photostatic copy of Plan B, Sheet No. 3, of the above named survey.

I am sure that you have given this matter much study, and I will be happy to have the benefit of your opinion thereon.

Sincerely yours

/s/ BASCOM GILES

Commissioner

of the General Land Office

Encls.

Giles:rlw

COPY

Honorable Bascom D. Giles,
Commissioner of the General Land Office
Austin, Texas.

Dear Commissioner Giles:

Your letter of November 25th was duly received

and I hope you will pardon the delay in answering it. I have just returned from an absence from the State, and additional delay was occasioned by the fact that I wished to submit the matter to Attorney General Eugene Stanley for his views and conclusions.

Let me say that I appreciate the courteous, careful and complete summation of your state's position in this matter as set forth by you. I freely acknowledge that you have done a thorough and able job, both in research and in presentation of the material on this subject from your point of view. However, my original opinion has not been changed, modified or varied by the citations and forceful arguments advanced.

Needless to say, we are and have been well aware of the Act of Congress admitting Louisiana into the Union, dated April 8, 1812 (2 Statutes at Large 701, Chapter 50), giving the middle of the Sabine as the western boundary. The Treaty of February 22, 1819 between the United States and Spain (8 Statutes at Large 252) is the principal genesis of Louisiana's right and title to the entire bed of the Sabine water system from the Gulf of Mexico to the 32nd degree of north latitude, and to the land boundary from the point where the 32nd parallel meets the Sabine's west bank north to the 33rd parallel. I do not think there can be any dispute as to the context of the various statutes and treaties cited by you, which we were actually aware of. Our differences arise over the effect

to be given these statutes and treaties and the proper construction to be placed upon them.

In the first place, we believe that the Act of Congress of July 5, 1848 (Chapter 94, 30th Congress—9 Statutes 245), which is your main reliance, is unconstitutional, null and void. The reason is that Louisiana was the beneficiary of the boundary agreement between the United States of America and the King of Spain, as set forth in the Treaty of February 22, 1819, the actual line having been marked out by a joint commission under the Convention of 1888 between the Texas Republic and the United States. We disagree entirely with your theory that the United States of America held title to a thin strip of water comprising the western half of the Sabine from the Gulf to the 32nd parallel and a thin strip of land equivalent to one-half of the width of the Sabine from the 32nd to the 33rd parallel (the Louisiana-Arkansas line). We believe that the only possible effect of the Treaty of 1819 was to extend the western boundary of the State of Louisiana between the Gulf and the 33rd parallel by half of the width of the Sabine River. Not only is this true as a legal proposition inherent in the fundamental law governing the relations between the United States of America and the individual states comprising its Federal Union; but certain actions of the United States authorities, as hereinafter related in greater detail, point to this as an inevitable conclusion. Consequently, when Congress, on July 5, 1848, permitted the Texas Legislature to extend the eastern boundary of Texas to the center of the Sabine

River, it had no right or authority to do so, and it gave away something that it did not actually own. As a corollary, the act of Texas of November 24, 1849 was negatory, null and void.

The western border of the "Louisiana Purchase" was, as you know, a matter of controversy for many years between Spain and the United States, during the course of which various states were admitted into the American Union and other changes took place in its component structure. Spain had always contended that the proper boundary between its lands on the North American continent and those of the United States of America was the Atchafalaya water system. Surely, if Spain had finally secured the enforcement of its conception of the proper boundary in 1819 and the border had been placed by the Treaty on the Atchafalaya River instead of the western bank of the Sabine, it cannot be gainsaid that the State of Louisiana's western boundary (as originally fixed in 1812) would have ipso facto been changed to conform. Furthermore, there is no showing that there was any reason, intent or purpose for the United States (as distinguished from the individual states that comprised its Federal Union) to establish a thin strip of water and land as a "buffer territory" between one of its component states—Louisiana—and its neighbor on the west—the Territory of the Spanish Kingdom. Any argument to the contrary appears even more fallacious, when it is recalled that 30 years elapsed between the Treaty of 1819 and the Act of Congress of 1848 purporting to consent to Texas having half

the Sabine, during which time Mexico supplanted Spain and the Republic of Texas, in turn Mexico; and finally Texas was admitted as a state several years prior to the date of said Act.

Our argument on this score is reinforced by the fact that the Overton Commission, which actually ran the boundary line in the period between 1839 and 1841, physically established it on the western bank of the Sabine water system up to the 32nd parallel and, from that point, north to the 33rd parallel of latitude. This latter portion of the boundary (from approximately Logansport, Louisiana to the Arkansas-Louisiana line) has always, as a matter of public knowledge and notorious opinion, been held to be the boundary between the states of Louisiana and Texas. No better illustration of this appears than the map of that portion of the boundary between the Republic of Texas and the State of Louisiana, a certified copy of which you sent me with your letter of November 25th. You will note on that very map that the territory to the east of the line is referred to as "State of Louisiana", and there is not the slightest intimation that the commissioners representing the United States and the Republic of Texas intended to project a narrow strip 150 feet wide running between the 32nd and 33rd parallels of north latitude and reserve it as federal territory. From all this, I am constrained to disagree with your observations on this question and the interpretation that you place on the Treaty of 1819 and the Act of Congress of 1848.

If the Sabine was, as stated by you, possibly

wider in 1819 than it is today, this would redound to the benefit of the State of Louisiana. Whatever was the western bank at the time of the Treaty of 1819 would be the proper boundary, regardless of any shrinkage or expansion in the actual water level of the stream itself. In closing, I wish to point out that the land portion of the boundary from the 32nd to the 33rd parallel has been acquiesced in for 100 years or more by both the State of Louisiana and the State of Texas. Certainly this is true from and after the physical location of the line on the ground by the joint commission acting under the Convention of April 25, 1838. I know of no instance in which the United States of America has claimed that any part of this boundary, land or water, is federal territory. Certainly it has never exercised any right of dominion over said territory; has collected no taxes therefrom, nor has it used same for any general, public, or federal purpose within the intent and under the requirements of the Constitution of the United States.

The exact opposite is true insofar as the State of Louisiana is concerned. The recognized western boundary has governed the actions of our citizens in the payment of taxes and the exercise of civil and criminal jurisdiction over the land adjacent to said boundary.

Lastly, I call your attention to the fact that in the Act of Texas of May 2, 1882 (Chapter XI—General Laws of Texas, 1882) and the Act of Congress of January 31, 1885 (Chapter 47, Second Session, 48th Congress) there is a recognition of both the State of

Texas and the United States that the western bank of the Sabine from the Gulf to the 32nd degree of latitude, and thence due north to the 33rd degree, is the correct eastern boundary of Texas. While I do not contend that this alone is conclusive, it is undoubtedly a factor favorable to our contentions and adverse to yours.

For the foregoing reasons, I regret that I cannot agree with the contentions advanced in your letter of November 25th. I am asking Attorney General Stanley to prepare a formal exposition of the claims and demands of this State, of which you will be advised in due course.

Yours sincerely,



STATE OF LOUISIANA

EXECUTIVE DEPARTMENT

BATON ROUGE

SAM H. JONES
GOVERNOR

December 17, 1941

Mr. Jacob H. Morrison
Attorney at Law
Maritime Building
New Orleans, Louisiana

Dear Jake:

I have your letter of December 15 and I am today mailing the letter to Commissioner Giles.

If you will prepare the proper form to be sent to the Louisiana delegation in Washington, we will be glad to write and mail these letters. I, too, think it is a good idea to apprise them of this matter.

Thanking you and with kindest personal regards,
I am

Sincerely yours,

/s/ **SAM H. JONES**
Governor of Louisiana

SHJ/dg

Item No. 3

20TH CONGRESS,
1st Session.

[Doc. No. 61.]

HO. OF REPS.
Executive.

FUGITIVES FROM UNITED STATES TO
MEXICO, &c. &c.

Message

FROM THE
PRESIDENT OF THE UNITED STATES,

TRANSMITTING THE INFORMATION REQUIRED
*By a resolution of the House of Representatives
of 2nd instant,*

RESPECTING
THE RECOVERY OF DEBTS, &c. IN THE
MEXICAN STATES,

FROM
PERSONS ABSCONDING FROM THE UNITED STATES:

ALSO, RESPECTING THE
BOUNDARY LINE BETWEEN THE UNITED STATES
AND THE

Province of Texas

JANUARY 15, 1828.

Read, and laid upon the table.

WASHINGTON:

PRINTED BY OALES & STATON.

1828.

To the House of Representatives of the United States:

WASHINGTON, 15th January, 1828.

In compliance with a resolution of the House of Representatives of the 2d instant, requesting information respecting the recovery of debts and property in the Mexican States, from persons absconding from the United States: and, also, respecting the boundary between the State of Louisiana and the Province of Texas, I now transmit a report from the Secretary of State on the subject-matter of the resolution.

JOHN QUINCY ADAMS.

[Doc. No. 61.]

DEPARTMENT OF STATE,

Washington, D. C. 14th January, 1828.

The Secretary of State, to whom has been referred, by the President, the resolution of the House of Representatives of the 2d instant, requesting him "to inform that House, if it be not incompatible with the public interest, whether any representation or arrangement to or with the Mexican Government, has been made so as to enable citizens of the United States to recover debts and property belonging to them, from persons absconding from the United States and taking refuge within the limits of that Government; and whether any steps have been taken to establish the boundary of the United States between the State of Louisiana and the Province of Texas," has the honor to report:

That no such representation or arrangement, as the above resolution describes, has been made: that information reached the Department of State that some impediment existed, in some part of the United Mexican States, to the recovery of debts from the inhabitants due to foreigners; but the information was not very authentic; and, upon, inquiry of the Minister of those States, residing near this Government, he stated that he was not aware of the existence of any such impediment, but that, on the contrary, he believed the tribunals of his country were open alike to foreigners and inhabitants for the recovery of their debts and the prosecution of all their rights: that, since the adoption of the above resolution, an instruction has been addressed to the Minister of the United States at Mexico, to inquire into the true state of the fact, and, if necessary, to make such representations or remonstrances as its actual condition may call for.

That the Minister of the United States at Mexico, when he was sent on his mission, was charged with a negotiation relating to the territorial boundary between that Republic and the United States in its whole extent; and, consequently, including that portion which divides Louisiana from the Province of Texas: but no definitive arrangement on that subject has been yet concluded; and it is respectfully submitted to the President, that, in the present stage of the negotiation, it would be premature to publish the correspondence that has passed between the two Governments.

All which is respectfull[y] reported.

H. CLAY.

BEAUMONT ENTERPRISE

YOUR HOME NEWSPAPER FOR NINETY-ONE YEARS

Vol. 82, No. 22

BEAUMONT, TEXAS, WEDNESDAY, JUNE 2, 1964

24 Pages, The Price



TEXAS LAW SPREADS EASTWARD—Texas is now enforcing game and fish law in all the shaded area shown here, which includes most of the east jetty at Sabine. A recent ruling, which is under appeal to the U.S. Supreme Court, set a new boundary line eastward from the mouth of the old Atchafalaya River channel, thus including some of the old channel and a meander of the Gulf of Mexico which previously was considered part of Louisiana.

Texas Law Rules East Jetty Now

BY BOB WILSON
Staff Writer

Texas game and fish laws now apply to waters surrounding virtually all of the east jetty at the mouth of the Atchafalaya River south of Sabine Pass, territory which has always been under Louisiana law until now.

Texas laws also apply to a big chunk of the Gulf of Mexico southeast of the Sabine point in another area previously considered part of Louisiana.

It's all the result of a recent ruling by a federal court which, until finally judged by the U.S. Supreme Court, at least temporarily puts those waters in Texas.

The ruling established the border between Texas and Louisiana as following the middle of the old Atchafalaya River channel.

Until that decision was made, the border was considered a line mid-way between the jetty, with the east jetty in Louisiana and the west jetty in Texas.

However, the new line does not follow the channel between the jetty. It also

eastward across the east jetty and out into the Gulf.

All of which means that the Texas Parks and Wildlife Department now is charged with enforcing Texas game and fish laws in an area which traditionally has operated under Louisiana law.

James U. Cross, Austin, executive director of the Parks and Wildlife Department, told The Enterprise that enforcement of Texas game and fish laws in that area has begun.

"However, we do not plan to rush in there and create a lot of problems. For one thing, the ruling is being appealed. For another, we want to be reasonable about the whole thing and give people time to learn what has happened," Cross said.

Several laws, including shrimp-trapping regulations, differ between Texas and Louisiana.

The line showing the new border doesn't differ from what most people observed as the previous border at most points along the

(See LAW, Page 4)

LAW

(Continued From Page One)

Saline River, through Lake Saline and down the channel from Lake Saline to the Gulf.

The big difference begins where the land ends.

The line forming the border leaves the mouth of the Saline River about mid-way between Texas Point and Louisiana Point, which are the southernmost points of land in the two states, and runs southeasterly, roughly toward the Mobile light.

The reason for this is the mouth of the old Saline River traveled in that direction, thus establishing a southeasterly direction for the border extending into the Gulf.

The jetties turn and run in a more southerly direction at that point. Thus the

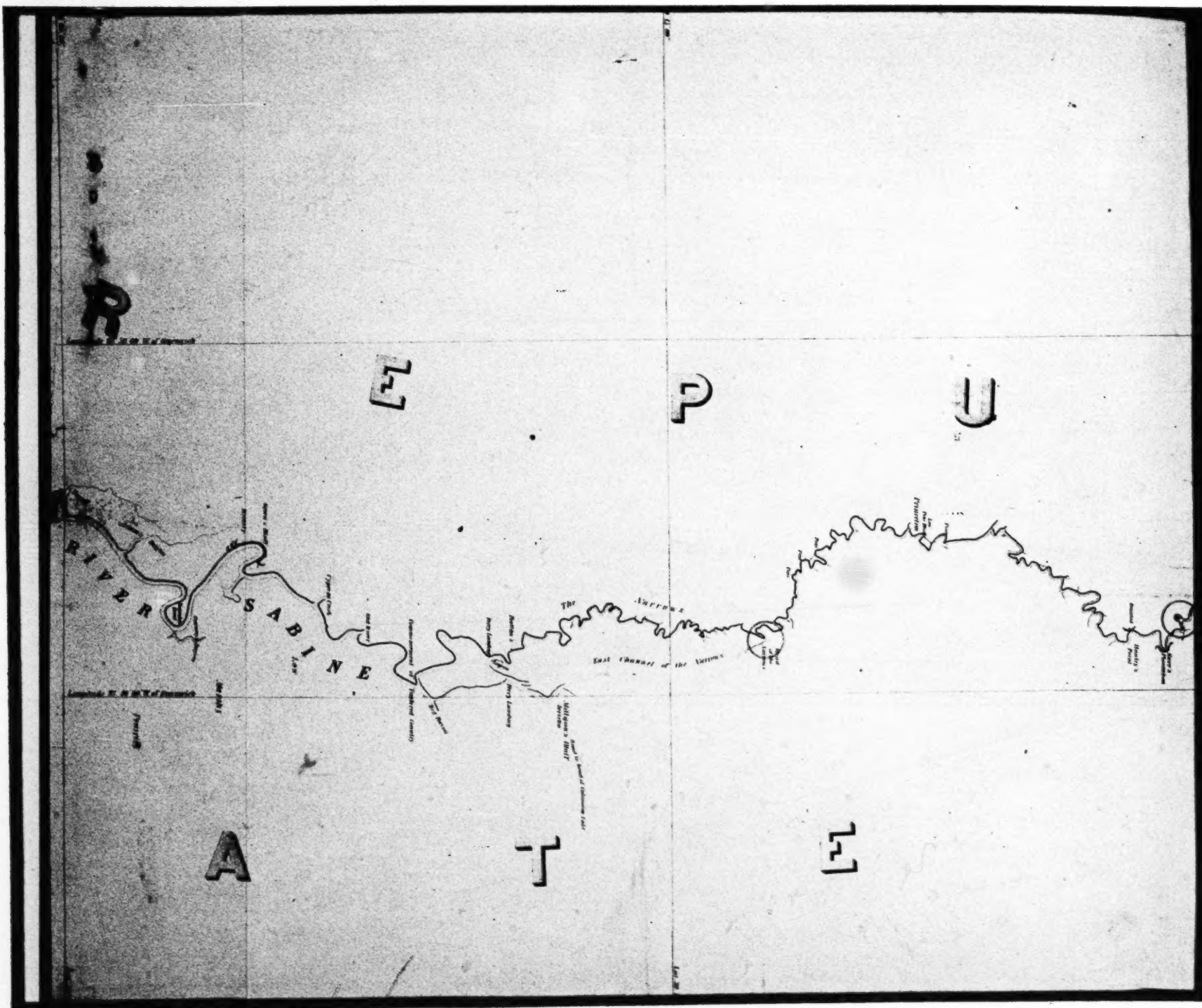
base of the east jetty and a short piece of the jetty extending into the Gulf still lie within Louisiana.

But the remainder of the East jetty, including the safety pass, is in Texas.

The new border is not marked by any visible means.

Crews indicated that Texas game management officers will start patrolling the newly acquired area.

Anyone with questions on game laws which apply in the area can get information by calling the district office of the Parks and Wildlife Department in Beaumont, at 565-3336.



OVERSIZE PAGE
SEE NEXT FRAME
FOR REMAINDER OF PAGE

This drawing shows the position of the Island of the Laysan, as determined by the Laysan Survey, 1914, and is not to be taken as a representation of the actual shape of the Island. The Laysan Survey, 1914, was made by the U.S. Navy, and the results are given in the accompanying table. The Laysan Survey, 1914, was made by the U.S. Navy, and the results are given in the accompanying table. The Laysan Survey, 1914, was made by the U.S. Navy, and the results are given in the accompanying table.

SCALE OF MILES

This drawing shows the position of the Island of the Laysan, as determined by the Laysan Survey, 1914, and is not to be taken as a representation of the actual shape of the Island. The Laysan Survey, 1914, was made by the U.S. Navy, and the results are given in the accompanying table. The Laysan Survey, 1914, was made by the U.S. Navy, and the results are given in the accompanying table.

Table of the Laysan Survey, 1914, showing the position of the Island of the Laysan, as determined by the Laysan Survey, 1914, and is not to be taken as a representation of the actual shape of the Island. The Laysan Survey, 1914, was made by the U.S. Navy, and the results are given in the accompanying table. The Laysan Survey, 1914, was made by the U.S. Navy, and the results are given in the accompanying table.

Point of Observation	Latitude	Longitude	Height
Point A	16° 42' N	159° 11' W	1000
Point B	16° 42' N	159° 11' W	1000
Point C	16° 42' N	159° 11' W	1000
Point D	16° 42' N	159° 11' W	1000
Point E	16° 42' N	159° 11' W	1000
Point F	16° 42' N	159° 11' W	1000
Point G	16° 42' N	159° 11' W	1000
Point H	16° 42' N	159° 11' W	1000
Point I	16° 42' N	159° 11' W	1000
Point J	16° 42' N	159° 11' W	1000
Point K	16° 42' N	159° 11' W	1000
Point L	16° 42' N	159° 11' W	1000
Point M	16° 42' N	159° 11' W	1000
Point N	16° 42' N	159° 11' W	1000
Point O	16° 42' N	159° 11' W	1000
Point P	16° 42' N	159° 11' W	1000
Point Q	16° 42' N	159° 11' W	1000
Point R	16° 42' N	159° 11' W	1000
Point S	16° 42' N	159° 11' W	1000
Point T	16° 42' N	159° 11' W	1000
Point U	16° 42' N	159° 11' W	1000
Point V	16° 42' N	159° 11' W	1000
Point W	16° 42' N	159° 11' W	1000
Point X	16° 42' N	159° 11' W	1000
Point Y	16° 42' N	159° 11' W	1000
Point Z	16° 42' N	159° 11' W	1000

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U.S. Navy

U.S. Navy

ALBA

OF THE

RIVER SABINE

FROM ITS MOUTH ON THE

GULF OF MEXICO IN THE SEA

to Logan's Ferry

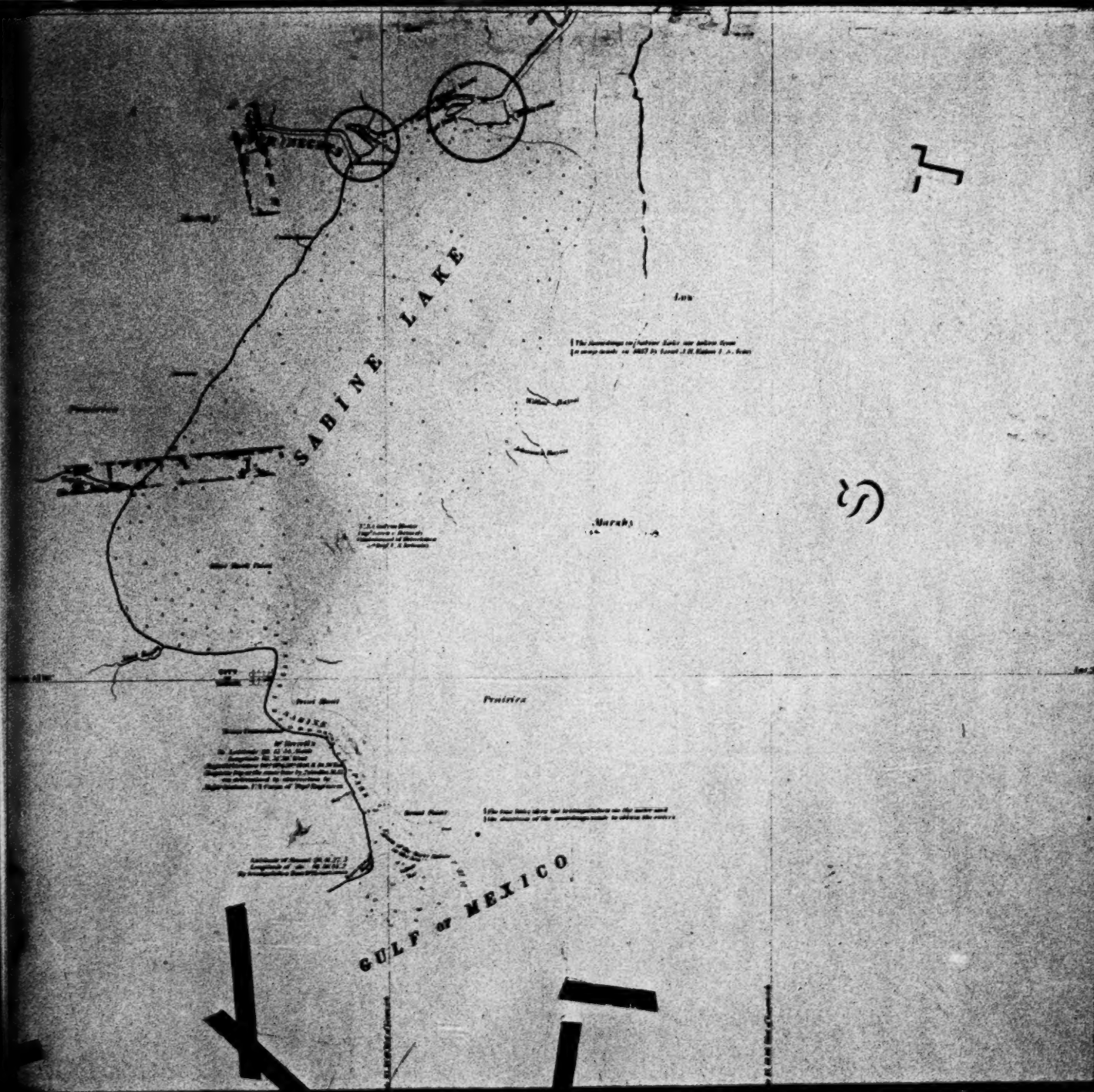
IN LATITUDE 31° 58' 24" NORTH.

During the summer before the United States and by the title of "River
between and public of interest and held down by survey in 1894
under the direction of the Commission appointed by the

proceeding under the title of the Commission
signed at Washington
April 25th 1894

Surveyed in 1894

ALBA
OF THE
RIVER SABINE
FROM ITS MOUTH ON THE
GULF OF MEXICO IN THE SEA
to Logan's Ferry
IN LATITUDE 31° 58' 24" NORTH.





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FILED
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NO. 36, ORIGINAL

MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

vs.

THE STATE OF LOUISIANA,

Defendant.

**ACCEPTANCE OF THE STATE OF TEXAS
OF THE REPORT OF SPECIAL MASTER,
WITH ONE EXCEPTION**

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NOLA WHITE
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Defendant.

ACCEPTANCE OF THE STATE OF TEXAS
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WITH ONE EXCEPTION

OPENING STATEMENT

The Report of the Special Master, Judge Robert Van Pelt, was filed in this Original action on May 22, 1972. The parties were given 45 days within which to file their exceptions, if any, to the Report. The State of Texas, Plaintiff, accepts and urges approval of the Report, subject to the one exception hereinafter stated.

EXCEPTION

The State of Texas excepts to that portion of the Report which reads as follows:

"It is the conclusion of the Special Master that all islands which were in the river in 1812 belong to the State of Louisiana . . . your Master recom-

mends that it be determined that all islands in the Sabine on April 8, 1812, the date of the passage of the Act admitting the State of Louisiana into the union, belong to Louisiana." (35)

The controlling portion of the boundary description of the proposed new State of Louisiana, as set forth in the Enabling Act of 1811, reads:

"... beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude; ..."

We have italicized that portion of the description which emphasizes the middle or centerline of the river, as the boundary line. The phrase "including all islands" is clearly secondary to the centerline and refers only to all islands east of the centerline and within the boundaries described in the Act. This was the precise interpretation placed on the "including all islands" phrase by the Attorney General of Louisiana in a previous brief filed in this Court in *U.S. v. Louisiana et al*, No. 10 Original,² in which it was said:

"Those limits include all islands eastward of the middle of the River Sabine to the thirty-second degree latitude and also all islands within three leagues of the coast in the Gulf of Mexico." (22-23)

"However, the reference to the inclusion of islands within the limits of the state, whether in the east half of the River Sabine or within three leagues of the Gulf coast, should not confuse one's thinking with the fact that by boundary description in the Congressional Enabling Act of 1811,

² Stat. 641. Emphasis supplied.

³Louisiana's Supplemental Brief in Opposition to Motion for Judgment, pp. 22-24, *U.S. v. Louisiana, et al.*, No. 10, Original, October Term, 1959. See quotations therefrom printed at pages 31-33, Brief for the State of Texas in Support of Motion for Judgment in the present case.

the 1812 Louisiana Constitution, and again in the Congressional Act of Admission of April 8, 1812, the purpose was to fix the territorial limits of the State of Louisiana, both landward and seaward and to include all islands within said limits." (24)

This also appears to be the interpretation of the States of Louisiana and Texas, when they both recognized that the western half of the Sabine was owned by neither State in their Resolutions of 1848,^{*} and of the Congress when it passed the Act of July 5, 1848 authorizing Texas to extend its eastern boundary "so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude."

Since the Special Master recognizes that if any existing islands in the west half of the Sabine were also in existence in 1812, they may in any event belong to the State of Texas by reason of prescription and acquiescence, and recommends a further hearing on this phase of the case, (36-37), we propose that judgment concerning initial ownership of any such islands be deferred and that the entire question of island ownership in the western half of the Sabine be restudied by the Master and reported on finally in his proposed supplementary report.

PRAYER

WHEREFORE, the State of Texas prays that the Report of the Special Master be in all things adopted and approved as the judgment of the Court, except for determination of the following matters in a subsequent report:

^{*}Both are copied in full in the Report of the Special Master, pp. 16-17.

^{*}Id., p. 18.

(1) Whether any presently existing islands in the western half of the Sabine were in existence in 1812, and if so, whether they were initially incorporated by Congress into and as a part of the State of Louisiana.

(2) Whether Texas has title to any such islands by reason of the Act of July 5, 1848 (9 Stat. 245) or by reason of prescription and acquiescence.

Respectfully submitted,

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July, 1972

CERTIFICATE

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the — day of July, 1972, I served copies of the foregoing Exceptions of the State of Texas to the Report of Special Master by first class mail, postage prepaid, to the offices of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas

CO

IN THE	Se 1
SUPREME COURT OF THE UNITED STATES	AUG 2 1969 MICHAEL BOBAY, JR. CLERK

OCTOBER TERM, 1969

NO. 36, ORIGINAL

THE STATE OF TEXAS,
Plaintiff
vs.
THE STATE OF LOUISIANA,
Defendant

BRIEF OF THE STATE OF TEXAS IN
SUPPORT OF THE SPECIAL MASTER'S
REPORT AND IN REPLY TO EXCEPTIONS
FILED BY THE STATE OF LOUISIANA

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1969

NO. 36, ORIGINAL

THE STATE OF TEXAS,

Plaintiff

vs.

THE STATE OF LOUISIANA,

Defendant

BRIEF OF THE STATE OF TEXAS IN
SUPPORT OF THE SPECIAL MASTER'S
REPORT AND IN REPLY TO EXCEPTIONS
FILED BY THE STATE OF LOUISIANA

STATEMENT

This suit was instituted by the State of Texas for the purpose of establishing its rights as against the State of Louisiana to the jurisdiction over and ownership of the western half of the Sabine River¹ from the mouth of the River on the Gulf of Mexico to the 32nd degree of north latitude, and for a decree confirming the boundary of the two States in the middle of said stream.

¹The use of the term "Sabine River" or "Sabine" includes Sabine Pass and Sabine Lake. By their pleadings, the parties are in agreement that these streams form a continuous body of navigable water, and that for convenience they are referred to collectively as "Sabine River," unless otherwise noted.

The Honorable Robert Van Pelt, appointed by the Court as Special Master, after hearing the evidence and arguments of the parties, has filed his Report holding with Texas on the basic issues, to-wit:

1. That the western half of the Sabine was never a part of the State of Louisiana but was a part of the territory of the United States when on July 5, 1848, Congress gave consent for the State of Texas to extend its eastern boundary so as to include such area. (Special Master's Report, 12-26).

2. That in addition to its title thus acquired from the United States, as a matter of law, Texas has established its eastern boundary in the geographic middle of the Sabine under the doctrine of prescription and acquiescence. (Special Master's Report, 27-30).

3. That the Sabine boundary between the two States, as a matter of law and by prescription and acquiescence, is the geographic middle of the stream rather than the thalweg center of a main navigable channel. (Special Master's Report, 31-34).

Louisiana has filed exceptions to the above findings of the Special Master together with a brief in support of its exceptions. Texas supports the above basic findings and all recommendations of the Special Master, with only one reservation and exception heretofore filed as to a portion of an incidental and independent conclusion relating to the ownership of three very small "islands" at the mouth of the main thread of the Sabine River (as distinguished from Sabine Lake and Pass) and one alleged four-acre "island" at the mouth of the Neches River. As to these alleged small "islands" west of the geographic middle of the Sabine, the Special Master concludes that they may be owned by Louisiana if it is hereafter shown that they existed as true

islands in 1812 and if Texas has not acquired title to them by prescription and acquiescence. Since the Report recommends that the Special Master be authorized to hear further evidence as to the ownership of these alleged islands, Texas suggests that the entire question of island ownership in the western half of the Sabine be reserved and again referred to the Special Master after the Court has determined whether it approves his findings and recommendations on the above basic and controlling issues as to the boundary line between the two States.

Texas has heretofore filed with the Court and the Special Master a brief entitled "Brief for the State of Texas in Support of Motion for Judgment", dated July 10, 1970, which consists of 54 pages plus a separately numbered 45 page Appendix. It will be hereinafter referred to as "Texas Brief" or "Tex. Br.", with frequent citations to more detailed arguments and documents which have been reproduced in its Appendix (Tex. Br. App.), so as not to repeat or reprint all of such arguments and documents in this Brief. All citations to pages in the Texas Brief and Appendix will refer to the reprinted copies filed in compliance with type sizes required by the Rules of the Supreme Court. The original printing in smaller type should be discarded.

The purpose of this Brief is to summarize and consolidate all arguments heretofore made in support of the Special Master's Report. Actually, the Report is so well annotated, both as to the law and the evidence, that very little is required to be said in its support. Therefore, a principal function of this Brief will be to reply to Louisiana's exceptions and its Brief in support of such exceptions.

ARGUMENT

I

THE SPECIAL MASTER CORRECTLY HELD AS A MATTER OF LAW THAT THE WESTERN HALF OF THE SABINE WAS NEVER A PART OF THE STATE OF LOUISIANA BUT WAS A PART OF THE TERRITORY OF THE UNITED STATES WHEN ON JULY 5, 1848, CONGRESS GAVE CONSENT FOR THE STATE OF TEXAS TO EXTEND ITS EASTERN BOUNDARY SO AS TO INCLUDE SUCH AREA. (In reply to Louisiana's Exception No. 1 and Point "A" of Louisiana's Brief.)

A. The area in controversy was part of the territory acquired by the United States from France under the Louisiana Purchase Treaty in 1803.

It is undisputed in this case that the area in controversy was acquired by the United States from France as part of the Louisiana Purchase in 1803. 8 Stat., 200. (Copied in Tex. Br., App., p. 1).

By this Purchase, the United States obtained from France a vast area of land between the Mississippi River and the Rocky Mountains, from which all or part of fifteen States have been carved.* The United States claimed that the western boundary of the Purchase was the Rio Grande and that it thus included the area which comprises the present State of Texas.* This

*JAMES K. HOSMER, HISTORY OF THE LOUISIANA PURCHASE (1902) 202.

*THOMAS JEFFERSON, THE LIMITS AND BOUNDS OF LOUISIANA (1804) 27-28, 31-32, published in DOCUMENTS RELATING TO THE PURCHASE AND EXPLORATION OF LOUISIANA (Houghton Mifflin Co., 1904); ADAMS, HISTORY OF THE UNITED STATES, II, 5-7, 298; CHANNING, HISTORY OF THE UNITED STATES, IV, 331-333; THOMAS M. MARSHALL, A HISTORY OF THE WESTERN BOUNDARY OF THE LOUISIANA PURCHASE. 1819-1841 (1914) 1-46.

is significant in the present controversy only to the extent that it explains why the United States limited the State of Louisiana to a western boundary in the middle of the Sabine River in 1812. The Nation was then and for seven years thereafter claiming the Province of Texas, and as hereinafter shown, it was the policy of the United States to fix mid-stream boundaries in navigable waters between States and territories. It was not until 1819 that the United States ceded to Spain the area west of the west bank of the Sabine, retaining as part of its territory the western half of the stream.'

B. The area in controversy was never included within the boundaries of the State of Louisiana.

The area in controversy was included within the Territory of Orleans by Act of Congress in 1804 (2 Stat. 283) but was not included by Congress and the people of Louisiana within the boundaries of the State of Louisiana. The Territory of Orleans was created by Congress from that portion of the Louisiana Purchase lying west of the Mississippi River and south of the 33rd degree of north latitude. In this case, Louisiana admits that the west boundary of this Territory, from which the State of Louisiana was formed, "had not been established." From 1804 until 1819, the United States claimed that the Territory of Orleans embraced all of the lands between the Mississippi River and the Rio Grande, including all of the Province of Texas.* Map 4 from Thomas M. Marshall's exhaustive work on the Louisiana Purchase is reproduced on page 16 of Texas' Brief in Support of Motion for Judgment. It shows Jefferson's final conception of the size of the

*3 MILLER, TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES (1934) 3.

'Defendant's Answer, p. 5.

*See footnote 3, *supra*; MARSHALL, *Op. Cit. supra*, 13-16, 21-22, 55-60.

purchase. All lands depicted south of the 33rd degree of north latitude were included in the Territory of Orleans.

- (1) The Enabling Act of Congress, February 20, 1811, specifically limited the proposed State of Louisiana to a western boundary "along the middle of said [Sabine] river, including all islands to the thirty-second degree of latitude."
(2 Stat. 641)

Congress authorized the inhabitants of a certain portion of the Louisiana Purchase to form a government and seek admission as the State of Louisiana. The relevant portion of the Enabling Act specifically defined the area as to which such authority was granted, with the west boundary being fixed in the middle of the Sabine River, as follows:

"That the inhabitants of all *that part* of the territory or country ceded under the name of Louisiana . . . *contained within the following limits*, that is to say: beginning at the mouth of the river Sabine, thence by a line to be drawn *along the middle of the said river, including all islands to the thirty-second degree of latitude*; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi . . . be, and they are hereby authorized to form for themselves a constitution and state government . . ."

Louisiana does not deny the passage or the terms of this Enabling Act.

- (2) The Constitution of the State of Louisiana adopted on January 22, 1812, fixed its western boundary in the middle of the Sabine River, using substantially the same language as the Enabling Act.

¹Emphasis supplied unless otherwise noted. The Act is printed in full in Tex. Br. App., p. 3.

Pursuant to the authority granted by Congress, the inhabitants of this specifically defined area (which was carved out of the Territory) formed their government and adopted the State Constitution of Louisiana.* The Preamble of this Constitution fixed the western boundary of the State in the middle of the Sabine River, using substantially the same language as in the Enabling Act, as follows:

"We, the Representatives of the People of all *that part* of the Territory or country ceded under the name of Louisiana, by the treaty made at Paris, on the 30th day of April, 1803, between the United States and France, *contained in the following limits, to wit: beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty second degree of latitude—thence due north to the Northernmost part of the thirty third degree of north latitude*—thence along the said parallel of latitude to the river Mississippi—thence down the said river to the river Iberville, and from thence along the middle of the said river and lakes Maurepas and Pontchartrain to the Gulf of Mexico—thence bounded by the said Gulf of Mexico to the place of beginning, including all Islands within three leagues of the coast—in Convention Assembled . . . do ordain and establish the following constitution or form of government, and do mutually agree with each other to form ourselves into a free and independent State, by the name of the State of Louisiana."

*3 WEST, LOUISIANA STATUTES ANNOT., CONST. 511; Copied in Tex. Br. App., p. 4, and in Tex. Ex. C, p. 1.

"This is the same descriptive language as in the Enabling Act except for adding the word "its" before the word "islands" and a comma after such word. If the difference is of any relevance, obviously the Acts of Congress would control because it had exclusive power to admit a new State and "to dispose of . . . the Territory or other Property belonging to the United States . . ." Article IV, Sec. 3, CONSTITUTION OF THE UNITED STATES. *Alabama vs. Texas*, 347 U.S. 272 (1953).

A controlling point in this case is that the above constitutional boundary provision has never been amended by Louisiana, except for the addition on the east of a small portion of "West Florida." *Louisiana v. Mississippi*, 202 U.S. 1 (1906). As far as its western boundary in the middle of Sabine River is concerned, this constitutional provision is the existing law of the State of Louisiana.

Louisiana attempts to ignore this Congressional and Constitutional boundary limit in its Exceptions Brief (pp. 11-19) arguing that its western boundary was uncertain and to be later fixed by treaty with Spain. It copies a long debate in the House by Mr. Poindexter in which he makes this argument when the Enabling Act of 1811 was under consideration. What Louisiana overlooks is that, Section 2 of the bill then under debate and as passed by the House on January 15, 1811, provided for no fixed boundary on the west, merely describing the area of the proposed State to be that "now contained within the limits of the Territory of Orleans, except that part lying east of the river Iberville and a line to be drawn along the middle of the lakes Maurepas and Pontchartrain to the ocean" (La. Ex. A, 62). However, the Senate did not go along with any such uncertain western boundary for the State of Louisiana. It amended the bill to provide the definite and fixed western boundary provision which was finally enacted and that is now before the court in this case. (See copy of proceedings, Texas' Exhibit G, pp. 51-58).

In *Louisiana v. Mississippi*, *supra*, Louisiana cited the Constitution of 1812 boundary provision as the existing boundary of the State, together with the addition of the small area on the east consented to by Act of Congress on April 14, 1812, 2 Stat. 702. The Court quoted the 1812 constitutional boundary provision and

based its decision, in part, on that provision as containing the existing boundary limits of the State of Louisiana. See also *United States v. Louisiana, et al*, 363 U.S. 1, 66, 75-76 (1960).

- (3) The Act of Congress, April 8, 1812, admitting Louisiana as a State, repeats the same Sabine boundary (middle of the River) as in the Enabling Act of 1811 and in the Louisiana Constitution of 1812.

The relevant portion of the Act of Admission repeats the same middle of the Sabine River boundary as contained in the Enabling Act and in the Louisiana Constitution of 1812. (2 Stat. 701; Tex. Br. App., p. 5).

This Act not only reiterates that only "*that part of the territory . . . contained within the following limits*" was admitted, but adds a section which further confirms that a portion of the Territory of Orleans was omitted from the new State. Section 3 states "*that the new State, together with the residue of that portion of the country which was comprehended within the territory of Orleans . . . shall be one district . . .*" for the jurisdiction of a federal court created by the Act.

- (4) The mid-stream boundary of the State of Louisiana as fixed by Congress and the Constitution of Louisiana in 1812 was in accordance with the policy and law of the United States relating to navigable river boundaries between states and territories.

Louisiana's argument indicates that the State might question the reasonableness or intent of Congress in fixing its western boundary in the middle of the Sabine. While reasonableness and intent have little or no bearing in determining what Congress actually did in definite and unambiguous terms, it should be pointed out that the Congress was simply following established policy and law with reference to navigable water boun-

daries between states and territories. The middle of the stream is always followed, either by statute or by operation of law, except where prior treaties or agreements have fixed a different line. The Special Master has correctly held that establishment of "the Louisiana boundary in the middle of the Sabine River was clearly in accordance with the policy and law of the United States relating to river boundaries between States and territories, so that any present or future States would be treated equally with respect to common boundary streams." This policy has been recognized by the Supreme Court:

"[T]he United States early adopted and constantly has adhered to the policy of regarding lands under navigable waters in acquired territory, while under its sole dominion, as held for the ultimate benefit of future States, and so has refrained from making any disposal thereof, save in exceptional instances when impelled to particular disposals by some international duty or public exigency. It follows from this that disposals by the United States during the territorial period are not lightly to be inferred, and should not be regarded as intended unless the intention was definitely declared or otherwise made very plain." *United States v. Holt State Bank*, 270 U.S. 49, 55 (1926). See also *Shively v. Bowlly*, 152 U.S. 1, 49, 57-58 (1894).

The rule was also recognized and followed in *Louisiana v. Mississippi*, *supra*, p. 48, when speaking of the Mississippi River boundary established by Congress and the Louisiana Constitution of 1812. Although the Louisiana boundary limits on the east call only for the Mississippi River, and except for the mid-stream policy and law could have been interpreted to stop at the west bank of the River, the Court said, "Now to repeat, the boundary of Louisiana separating her from the State of Mississippi to the east is the thread of the

channel of the Mississippi River . . ." See also *Handly's Lessee v. Anthony*, 5 Wheat. 374, 379 (1820), in which Chief Justice Marshall wrote, "when a great river is the boundary between two nations or States, if the original property is in neither, and there be no convention about it, each holds to the middle of the stream."

There is no reason why the rule or the Act of Congress fixing Louisiana's western boundary in the middle of the Sabine should appear unusual to Louisiana, since all of its other water boundaries (Mississippi, Iberville, Amite, and Pearl Rivers, and Lakes Maurepas and Pontchartrain) go to the middle of the streams either by specific calls or by operation of the above stated rule of law. *Louisiana v. Mississippi, supra*; DOUGLAS, *Boundaries, Areas, etc. of the United States and the Several States*, GEOLOGICAL SURVEY BULLETIN 817 pp. 166-169 (1930).

When Louisiana was admitted as a State in 1812, the United States was claiming a vast area to the west, including all of Texas, and under the navigable river boundary policy and law then in effect it would have been more unusual if Congress had not limited Louisiana's western boundary to the middle of the Sabine. In any event, the geographical mid-stream boundary was what Congress specified, and it remains until this day the boundary as agreed to by the people of Louisiana in their Constitution of 1812.

Louisiana makes much of the fact that the United States followed a different policy on the Red River between Oklahoma and Texas. (La. Exceptions Brief, p. 37-38). The main distinction here is that the Red was held to be a non-navigable stream under which the United States retains title. Although it granted much of the north half of the river to Oklahoma tribes, the

United States still retains title to the south half of that stream. *Oklahoma v. Texas*, 258 U.S. 574 (1922).

- (5) Relinquishment by the United States of that portion of Texas lying west of the Sabine and retention of its title and jurisdiction over the western half of the Sabine River in the Treaty with Spain in 1819, did not result in an extension of the western boundary of Louisiana.

Louisiana bases its whole argument for a west bank boundary on a novel theory that the United States was "appearing on the part of the State of Louisiana," in negotiating the Treaty with Spain in 1819, or that by reason of such Treaty the western boundary of Louisiana was automatically eased over from the middle of the Sabine to the western bank of the stream.

*The United States Was Acting
for Itself in 1819 and Not for
the State of Louisiana*

Ignoring for the moment the constitutional requirement of specific Congressional approval before a state boundary can be changed, it should be pointed out that the territorial boundaries agreed to in the Treaty of 1819 do not touch a single boundary of the State of Louisiana as established by Congress and the Constitution of Louisiana. The Treaty does not mention the State of Louisiana and neither do the extensive negotiations and subsequent commentaries which have been examined by Plaintiff." The same is true of the Treaty of 1828 with Mexico" and the Treaty of 1838 with the

¹³ MILLER, TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES, 3-64; MARSHALL, A HISTORY OF THE WESTERN BOUNDARY OF THE LOUISIANA PURCHASE, 1818-1841 (1914) 17-244; *State Papers, Foreign Relations IV*, 422-692; COX, *The Louisiana-Texas Frontier*, SOUTHWESTERN HISTORICAL QUARTERLY (1913), Vol. XVII, 1-42, 140-187.

¹⁴ MILLER, *supra*, 405-420; MARSHALL, *supra*, 71-123.

Republic of Texas," adhering to the same boundary as in the Treaty of 1819. The relevant portions of all these treaties are printed in Tex. Br. App., 7-20.

As stated in the opening sentence of the Treaty of 1819, it was concerned with defining as between the United States and Spain "the limits of their respective bordering *territories* in North America." For the United States, this meant the boundaries of the residue of the territory purchased from France, which the United States claimed to include all of Texas, all or portions of what later became the States of Arkansas, Missouri, Iowa, Minnesota, Oklahoma, Kansas, Nebraska, South Dakota, North Dakota, Montana, Wyoming, Colorado, New Mexico, Idaho, Oregon, and Washington, and part of West Florida.

The sixteen years of negotiations with Spain on this Treaty began in 1803," nine years before the State of Louisiana was created, and continued for seven years after Louisiana was admitted as a State. During all of these sixteen years the United States insisted that it was entitled to all of the Province of Texas, receding at times during the latter years from the Rio Grande to the Colorado River, the Trinity River, and finally to the west bank of the Sabine." By the final terms agreed upon in 1819, the United States relinquished all of Texas west of the west bank of the Sabine in exchange for Florida and the Spanish claim to the Oregon Territory." There was strong public and official reaction led by Henry Clay, against the relinquishment of Texas, and final ratifications were not exchanged until February 19, 1821."

¹²³ MILLER, *supra*, 133-143; MARSHALL, *supra*, 206-241.

¹²⁴ MARSHALL, *supra*, 70.

¹²⁵ *Id.*, 17-70.

¹²⁶ *Id.*, 46-70.

¹²⁷ *Id.*, 66-74. Thomas Jefferson wrote to Henry Dearborn on July 5, 1819: "I cannot say I am anxious about the Spanish

If this Treaty had put an end to the plans of national leaders who wanted Texas as a territory and possibly as a future State, there might have been some reason for Congress to have permitted Louisiana to extend its boundary so as to include the western half of the Sabine. However, this was not the case. Henry Clay and John Quincy Adams immediately renewed efforts to regain Texas by diplomacy or purchase."

In 1821, Mexico declared its independence from Spain, and during the next fourteen years of negotiations with the new Mexican Republic as to the same boundary, the main thrust of the negotiators appointed by both President Adams and President Jackson was to effect a purchase of Texas from Mexico and fix the western boundary at the Rio Grande or as far west as possible. Mexico declined in 1828 and, as the price for a Treaty of Commerce, forced the signing of the Treaty of 1828. In it the United States agreed to the boundaries contained in the Treaty with Spain in 1819, but ratifications were delayed until April 5, 1832. (See footnote 17).

Appointment of commissioners to run the boundary was delayed, and it was never surveyed as agreed to in the Treaty. During this delay, President Jackson kept Anthony Butler in Mexico for six years still attempting to negotiate a purchase of Texas, with the offer finally reaching \$5 million." Also, Jackson interposed a claim that the Neches River (which lies west of the

treaty; in giving up the province of Texas, we gave up a sugar country sufficient for the supply of the United States. I would rather keep that and trust to the inevitable falling of Florida into our mouths." XIX THE WRITINGS OF THOMAS JEFFERSON, 270, 271. (Monticello ed. 1904)

"MARSHALL, *supra*, 86-123; MANNING, TEXAS AND THE BOUNDARY ISSUE, 1822-1829 (1913), XVII SOUTHWESTERN HISTORICAL QUARTERLY, 217, 240-260.

"MARSHALL, *supra*, 86-99.

Sabine but also runs into Sabine Lake) was the stream called the "Sabine" in the Treaty of 1819 and vowed that in any survey he would contend for that river as the boundary and would defend it by force if necessary."

Although not conclusive, there is evidence that Jackson and his friend, General Sam Houston, who came to Texas in 1832, had agreed upon a plan to wrest Texas from Mexico by revolution." In any event, that is what occurred in 1836. At the first election in the new Republic, Sam Houston was named President and the people voted overwhelmingly to seek annexation to the United States." The Republic was recognized as an independent nation on March 1, 1837," and the Sabine portion of the boundary agreed upon with Spain in 1819 and with Mexico in 1828 was first run on ground in accordance with the Treaty of 1838 between the United States and the Republic of Texas. (8 Stat. 511; Tex. Br. App., p 18). Annexation followed in 1845, or reannexation as many members of Congress called it." Texas was admitted as a State on December 29, 1845. 9 Stat. 108. Within less than three years thereafter,

"STENBERG, *Jackson's Neches Claim, 1829-1836*, XXXIX SOUTHWESTERN HISTORICAL QUARTERLY 255.

"*Id.*, also STENBERG, *The Texas Schemes of Jackson and Houston, 1829-1836*, SOUTHWESTERN SOCIAL SCIENCE QUARTERLY, XIII, 264-286; XV, 299-350. As early as 1833, Jackson endorsed a letter from Anthony Butler with these words: "The Convention in Texas meets the 1st of next April to form a constitution for themselves. When this is done, Mexico can never annex her jurisdiction again, or control its legislature. It will be useless after this act to enter into a treaty of boundary with Mexico." MARSHALL, *supra*, 102.

"JOHN HENRY BROWN, *HISTORY OF TEXAS, 1689-1892*, II 99.

"CONG. GLOBE, 24th Cong., 2d Sess., 270.

"President Polk also used the term "reannexation," and called the action by the United States "the peaceful acquisition of a territory once her own." *Inaugural Address, 1845*, V MESSAGES AND PAPERS OF THE PRESIDENTS, 2223, 2230-31.

Congress consented to the new State extending its eastern boundary from the west bank of the Sabine to the Louisiana line in the middle of the stream. (9 Stat. 245; Tex. Br. App., p. 23).

The foregoing summary of historical facts, which are subject to judicial notice, shows that in the Treaties of 1819, 1828, and 1838, the United States was acting for itself and not for the State of Louisiana, or any other single state, in delimiting the boundaries of the Nation's "*territories*" which bordered the original Province of Texas. They also show that the negotiations and treaties relating to the area west of the middle of the Sabine were chiefly concerned with keeping Texas as a territory or paving the way for it to become a State.

Until 1845, the western half of Sabine Pass, Sabine Lake and Sabine River was all that the Nation salvaged from that part of the territory ceded by France south of the 33rd degree of north latitude and west of the middle of the Sabine. However, the narrow width of this area did not make it any less a territorial possession subject to the Constitution and laws relating to territories of the United States." This was so held in a decision of the General Land Office, opinion by the First Assistant Secretary of the Interior, June 27, 1910, in a hearing involving title to certain islands in the Sabine in which both Louisiana and Texas were parties. The opinion said:

"Oklahoma v. Texas, 258 U.S. 574. Actually, Sabine Lake has an average width of 34,000 feet, and the greater area in controversy is in the western half of Sabine Lake, which comprises 30,727 acres, as compared with 4,000 acres in the western half of the River, and 1010 acres in the western half of the Pass. See affidavit of R. C. Wisdom, Director of the Surveying Division, General Land Office of Texas, Texas Exhibit G, Item 1.

"The boundaries thus defined necessarily left the western portion of the westernmost channel (of the Sabine) exclusively in Federal jurisdiction and dominion."

The brief filed by Louisiana in that hearing on September 16, 1909, pages 9-10, conceded this point in the following language:

"The United States enjoyed undisputed and general jurisdiction over the remaining western half, from the middle of the main or sailing channel, of said Sabine Pass, Sabine Lake and Sabine River, to the western shore from the date of the treaty with Spain, February 22, 1819, to July 5, 1848, at which latter date the following Act to extend the Texas boundary (U.S. Stat. Vol. 9, 245) was passed:" (The brief then cites the Act consenting to Texas extending its eastern boundary so as to include the western half of the Sabine Pass, Lake and River.) National Archives, Record Group 49.

Louisiana now seeks to dispute the position taken by its attorneys in 1909, as quoted above. It leans on three weak reeds: (1) an isolated report to Congress from Adams and Clay; (2) a Texas Court of Civil Appeals opinion relating to the Rio Grande; and (3) a theory of automatic boundary change or "coalescence" because of contiguity. We shall reply in that order under appropriate subheads.

The Adams-Clay Report

As heretofore shown, all treaties with Spain, Mexico and the Republic of Texas were made by the United States on its own behalf fixing the west bank of the Sabine as the west boundary of the United States, and not as the west boundary of the State of Louisiana.

"39 DECISIONS RELATING TO PUBLIC LANDS 53, 57 (1910), General Land Office, Department of Interior. Opinion and Louisiana Brief copied in full as Items 1 and 2 of Tex. Ex. B.

This is further evidenced by the cover sheet of President Adams' message to Congress on January 15, 1828 (Louisiana's Exceptions Brief, p. 117), transmitting a report from Secretary of State Henry Clay. Because President Adams makes passing reference to "the boundary between the State of Louisiana and the Province of Texas," Louisiana assumes that this and Clay's report referred to the west bank of the Sabine. This ignores the fact that both Adams and Clay were at the time busily engaged in negotiations with Mexico for a boundary line much farther west than the Sabine." The treaty with Mexico fixing the same line as the 1819 Treaty with Spain, although bearing a signatory date of January 12, 1828, was not known by Clay to have been concluded, according to his report of January 14, 1828, and it was not finally ratified and proclaimed until April 5, 1832. 8 Stat. 372.

The west bank of the Sabine as the western boundary of the United States was never surveyed until Texas became a Republic, and the Boundary Convention between those two Republics and the instructions to the Boundary Commissioners quite clearly relate only to an international boundary with no mention of the State of Louisiana in the instructions or the subsequent report. La. Ex. A-14, pp. 221-255. The Secretary of State's instructions to its Commissioner, J. H. Overton, dated April 8, 1840, stated:

"The duty assigned to the commission is one of a purely ministerial character to run and mark a line of boundary described with singular clearness and precision in a solemn treaty between two nations."

Louisiana also introduced an opinion dated March

¹See fn. 17, supra.

²See Ex. B attached to Louisiana's Memo No. 1 filed with Special Master as La. Ex. S.

7, 1910, from S. V. Proudfit, Acting Commissioner of the General Land Office to the Secretary of the Interior, in which it was stated:

"The Joint commission named under a convention between the United States and the Republic of Texas designated 'The Narrows' or western channel as the boundary line between the United States and Texas, but in doing so did not necessarily fix the western boundary of Louisiana. *The commission was not concerned with Louisiana's boundary; it was only required to locate and designate the boundary between the two republics and not the line between Louisiana and Texas.* There is no question but what the line established by this commission was not the western boundary of Louisiana and that there was Federal territory lying between the eastern boundary of Texas and the western boundary of Louisiana which did not form a part of either of these states, because Congress by the Act of 1848, extended the eastern boundary of the State of Texas from The Narrows to the center of the Sabine River which formed the boundary of the State of Louisiana, thus making the lines of the two States coincident for the first time."

These official records introduced by Louisiana preclude the necessity for further argument on this point. Clearly, Louisiana's western boundary was still "a line to be drawn along the middle of the said river," completely unaffected by the Nation's boundary being fixed on the west bank of the river.

Fragoso v. Cisneros, Relating to the Rio Grande

Louisiana cites the case of *Fragoso v. Cisneros*, 154 S.W.2d 991 (Tex. Civ. App. 1941, writ ref. w.o.m.) involving the Rio Grande boundary between the United States and Mexico as authority for its theory of an automatic change in a State's boundary as the result of the Nation changing its boundary by a treaty with

Mexico. This lower court cites no authority for its "common sense, practical construction", and the decision does not conform with Article IV, Section 3 of the United States Constitution; the decisions of this Court with respect to lands acquired by treaty; or the interpretation and action of Congress with respect to the necessity for it to grant Texas authority for these very lands along the Rio Grande to be brought within the boundaries of Texas.

With respect to these banco lands, which became a territory of the United States by reason of the Treaty with Mexico in 1905 and subsequent treaties, Congress enacted Public Law 132 in 1922 (42 Stat. 359) authorizing Texas to bring the new area within its jurisdiction, and Texas enacted a law so extending its boundaries. (GENERAL LAWS OF TEXAS, Ch. 101, 1923). Both laws and the House Judiciary Committee Report covering the necessity of this procedure are reproduced in Texas' Exhibit G, pp. 59-65.

The western half of the Sabine, being a territorial possession of the United States, its disposition or incorporation within the boundaries of an existing State was governed by Article IV, Section 3 of the United States Constitution and required action by the Congress. The relevant portion of the Constitution reads:

"... no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States;..."

There are numerous Supreme Court decisions on this point. In *Van Brocklin v. Tennessee*, 117 U.S. 151, 168 (1886), the Court said:

"But public and unoccupied lands, to which the United States have acquired title . . . by treaty with a foreign country, Congress, under the power conferred upon it by the Constitution, 'to dispose of and make all needful rules and regulations respecting the territory or other property of the United States' has the exclusive right to control and dispose of, as it has with regard to other property of the United States; and no state can interfere with this right or embarrass its exercise."

Since the Congress of the United States did not authorize Louisiana to extend its western boundary to the west bank of the Sabine, the western half of the Sabine remained a part of the territory of the United States from 1819 until Congress authorized Texas to extend its boundary so as to include the area on July 5, 1848 (9 Stat. 245; Tex. Br. App., 23-24) and Texas complied on November 24, 1849 (3 GAMMELS LAWS OF TEXAS 442; Tex. Br. App., 24).

Louisiana Boundary Did Not Automatically Change or Coalesce

We have already answered much of Louisiana's argument for an automatic change of boundary without approval of Congress and without action of its Legislature. Louisiana's final argument—that being the westernmost State after the Treaty of 1819 was ratified in 1821, it should have automatically inherited the western half of the Sabine—ignores the fact that

"For other cases holding that new territory acquired by treaty does not even become a part of the United States and subject to its domestic law without an Act of Congress, see Tex. Br., 30-33.

there remained strong opposition to the treaty relinquishing Texas up to the date of its ratification," and thereafter every American President and Secretary of State continuously sought to reacquire Texas by purchase or diplomacy until the Texas Annexation Agreement was accomplished in 1845." There was a reason for Congress to retain the western half of the Sabine for a possible future state, and any other policy would have been an unfair precedent for each subsequent western state which was later added to the Union. For instance, in 1846 Texas was the most western state and bordered on the Rio Grande with a Spanish Territory which later became the Territory and State of New Mexico. Its western border was very properly and consistently fixed at the middle of the Rio Grande. *New Mexico v. Texas*, 275 U.S. 279 (1927).

Louisiana's theory of automatic enlargement of its boundary after 1819 because of being then the most western state of the Union is akin to the old rule of "contiguity" or "geographical propinquity" by which nations once acquired additional territory under international law. The doctrine was rejected in the 19th century "because it is wholly lacking in precision," and it was never applied to include areas outside of a fixed statutory boundary or "to the extent of invoking it to supersede a vested legal title" in another sovereign." Obviously, the theory cannot apply on behalf of Louisiana against the United States under a Constitution

"Much of the opposition came from Louisiana. Secretary of State Adams wrote that ratification in 1821 was opposed in a resolution introduced in the Louisiana Legislature and that Louisiana Governor T. B. Robertson "made an attack upon the treaty in his speech to the Legislature." V-MEMOIRS OF JOHN QUINCY ADAMS, 285-86.

"IV SAMUEL FLAGG BEMIS, *THE AMERICAN SECRETARIES OF STATE AND THEIR DIPLOMACY* (1928); *United States v. Louisiana, et al.*, 363 U.S. 1, 39-40, footnote 73.

"II U.S. DEPARTMENT OF STATE, *DIGEST OF INTERNATIONAL LAW* 1046-1059 (1963).

which requires the approval of Congress before a State can change its boundary. In all of the cases cited by Defendant on this point, Congressional approval was held to be required.

The Supreme Court held squarely against Louisiana in *United States v. Louisiana, et al.*, 363 U.S. 1 (1960), when that State advanced the same argument with respect to its southern boundary being automatically extended to include any adjacent "tidelands" belt which was acquired by the United States under international law after Louisiana's admission to the Union. The Court said:

"It is sufficient for present purposes to note that there is no question of Congress' power to fix state land and water boundaries as a domestic matter. Such a boundary, fully effective as between Nation and State, undoubtedly circumscribes the extent of navigable *inland* waters and underlying lands owned by the State under the Pollard rule." (35)

* * *

"To the extent that Louisiana's reliance on postadmission events is for the purpose of showing that the United States established a three league 'National Boundary' in the Gulf, they cannot help her case, for reasons previously discussed. . . . Under the Submerged Lands Act, Louisiana's boundary must be measured at the time of her admission unless a subsequent change was approved by Congress. If the Act of Admission fixed the boundary at the shore, neither action by Congress fixing greater boundaries for other States nor Executive policy on the extent of territorial waters could constitute Congressional approval of a maritime boundary for Louisiana. . . ." (75-76)

Louisiana's argument for enlargement of a fixed water boundary by "coalescence" is analogous to a recognized legal doctrine of "accretion". However in a case where the ordinary rule of accretion would oth-

erwise apply, the Supreme Court held in *New Mexico v. Texas*, 275 U.S. 279, 301-302 (1927), that the rule did not operate to move the river boundary that had been otherwise fixed in the middle of the Rio Grande by the Act of Congress admitting New Mexico as a State and by the Constitution of New Mexico adopted prior to its admission. This case is squarely in point, because it involved a river boundary between two States, and Texas was complaining of the Master's finding that the boundary had been moved eastward by accretion which occurred after the boundary had been fixed in the middle of the Rio Grande as it existed in 1850. In overruling this portion of the Master's Report, the Supreme Court said:

"Both sides have filed exceptions to the master's report in reference to accretions. Texas, on the one hand, insists that he was in error in reporting as the boundary line the location occupied by the river after it has been moved eastward from its location in 1850 by accretions. New Mexico, on the other hand, insists conditionally—that is, only if its exceptions as to the location in 1850 are not sustained—that in determining the accretions in the Country Club area the master fixed the line of such accretions in an indefinite manner and not far enough to the east. We find that the contention of Texas is well taken and the conditional contention of New Mexico is therefore immaterial.

"This case is not one calling for the application of the general rule established in *Nebraska v. Iowa*, 143 U.S. 359, *Missouri v. Nebraska*, 196 U.S. 23, *Arkansas v. Tennessee*, 246 U.S. 158, and *Oklahoma v. Texas*, 260 U.S. 606, as to changes in State boundary lines caused by gradual accretions on a river boundary.

* * *

"New Mexico, when admitted as a State in 1912, explicitly declared in its Constitution that its

boundary ran 'along said thirty-second parallel to the Rio Grande . . . as it existed on the ninth day of September, one thousand eight hundred and fifty, to the parallel of thirty-one degrees, forty-seven minutes north latitude.' This was confirmed by the United States by admitting New Mexico as a State with the line thus described as its boundary; and Texas has also affirmed the same by its pleadings in this cause. *Since the Constitution defined its boundary by the channel of the river as existing in 1850, and Congress admitted it as a State with that boundary, New Mexico, manifestly, cannot now question this limitation of its boundary or assert a claim to any land east of the line thus limited.*" (301-302)

Texas submits that the foregoing case completely answers all of Louisiana's contentions that this Sabine boundary could have been changed to include the western half of the river by any method other than legislative action by Congress and by the State of Louisiana. The Defendant shows neither.

C. The eastern boundary of the State of Texas was properly and legally extended to include the western half of the Sabine River by the Act of Congress of July 5, 1848, and the Act of the Texas Legislature on November 24, 1849,

(1) The Consent of Congress.

The consent of Congress in the Act of July 5, 1848 (9 Stat. 245) reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, also one half of Sabine River, from its mouth as far north as the thirty-second degree of north latitude."

This action had been requested by Resolution of the Texas Legislature approved March 18, 1848. See Tex. Br. App., 22.

(2) The Act of the Texas Legislature

The Act of the Texas Legislature extending its eastern boundary to the middle of the Sabine reads in part as follows:

"Sec. 1. *Be it enacted by the Legislature of the State of Texas*, That in accordance with the consent of the Congress of the United States, given by an act of said Congress, approved July 5th, 1848, the Eastern Boundary of the State of Texas be, and the same is hereby extended so as to include within the limits of the State of Texas, the western half of Sabine Pass, Sabine Lake and Sabine River from its mouth as far north as the thirty-second degree of north latitude . . ." (See full text in Tex. Br. App., 24.)

(3) State Ownership and Jurisdiction Extend to the Waters of and Lands Beneath Navigable Streams within State Boundaries.

It is conceded by Louisiana that the Sabine River is navigable in fact throughout the length involved in this controversy and that it has been navigable in fact since 1812. (See Answer, p. 4 and Stipulation). Therefore, under a long-established rule of law, Texas has had State jurisdiction over and ownership of the lands beneath the waters of the western half of the Sabine ever since the area was legally embraced within its boundaries. Navigability and location within State boundaries are the two basic requirements of the rule. It was stated as follows in *Martin v. Waddell*, 16 Pet. 367, 410 (1842):

"For when the Revolution took place, the people of each state became themselves sovereign; and in

that character hold the absolute right to *all their navigable waters and the soils under them*, for their own common use, subject only to the rights since surrendered by the Constitution to the general government."

The most often cited case is *Pollard's Lessee v. Hagan*, 3 How. 212, 229 (1845), which said:

"First. The shores of navigable waters, and the soils under them, were not granted by the Constitution to the United States, but were reserved to the States respectively. Second. The new States have the same rights, sovereignty, and jurisdiction over this subject as the original States."

In any event, the rule has been confirmed and reinforced by the Submerged Lands Act of 1953, which quitclaimed to the states "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters." 67 Stat. 29.

Louisiana's contention that the Congressional Act of July 5, 1848 (9 Stat. 245) only referred to criminal jurisdiction is fully answered in the Special Master's Report, p. 25. There was no limitation in the Act authorizing Texas to extend its boundary so as to include the western half of the Sabine. Since the area was part of the territory of the United States outside of the boundaries of the State of Louisiana, there is no legal basis for Louisiana to question the constitutionality of this disposition of the area by Congress. Article IV, Section 3, U.S. CONSTITUTION; *Alabama v. Texas*, 347 U.S. 272 (1953); *Van Brocklin v. Tennessee*, 117 U.S. 151, 168, (1886).

II

THE SPECIAL MASTER CORRECTLY
HELD THAT IN ADDITION TO ITS TITLE
ACQUIRED FROM THE UNITED STATES

AS A MATTER OF LAW, TEXAS HAS ESTABLISHED ITS EASTERN BOUNDARY IN THE GEOGRAPHIC MIDDLE OF THE SABINE UNDER THE DOCTRINE OF PRESCRIPTION AND ACQUIESCENCE. (In Reply to Louisiana's Exception No. 2 and Point "B" of Louisiana's Brief).

The Special Master's Report on prescription and acquiescence (pp. 27-30), and his careful listing and comments on the volumes of evidence showing acts of prescription by Texas and acts of acquiescence by Louisiana to the geographic mid-stream boundary (Appendix A-E, pp. 41-109), clearly demonstrate the correctness of his finding on this point. Further briefing would be simply repetitious. The Master's Report is fully supported by the evidence covering more than a century of recognition and use of the geographic mid-stream boundary by both Texas and Louisiana and by the United States.

Louisiana sums up its reply on this point with the argument that "the undisputed facts do not sustain the findings of the Special Master that Louisiana *lost title* to the bed and subsoil of the west half of the Sabine." In the first place, the Master did not find that Louisiana "lost title". He found that as a matter of law Louisiana *never had title* to the west half of the Sabine, and that prescription and acquiescence merely confirmed the legal title of Texas to the geographic mid-stream boundary which had been fixed as a matter of law. In the second place, the Special Master was not obliged to make this finding on undisputed evidence. That would have been necessary only if he had made the finding on Texas' Motion for Summary Judgment, which the Master did not do. Instead, he conducted a full hearing on the merits, receiving all evidence offered by both States. (Report, p. 6-7). Therefore, the

Special Master was entitled to make his findings on the preponderance of the evidence and not alone on undisputed evidence.

If the Court will briefly examine the 193 acts, maps, shell leases, oil leases, pipeline rights-of-way, tax collection affidavits, exercises of law enforcement jurisdiction, bridge agreements and other items specifically enumerated by the Special Master (Report, 41-109) as showing recognition and use of the geographic mid-stream of the Sabine as the boundary between Texas and Louisiana, it will be evident that any other finding on prescription and acquiescence would have been against the great weight and preponderance of the evidence. Such an examination of the exhibits will not be as tedious as it may sound, because they have been carefully grouped and indexed. For instance, large maps prepared by Federal, Louisiana and Texas agencies are assembled in Texas Exhibits A and F, and other maps, pictures and documents may be readily referred to through the index pages in the front of Texas Exhibits B, C, D, E, G, H and K.

From November 24, 1849, when Texas extended its boundary and the boundaries of all of its counties to include the western half of the Sabine, under consent granted by Congress, the record shows that Louisiana acquiesced in the geographic mid-stream boundary (as previously fixed by Congress and the Louisiana Constitution in 1811 and 1812) for more than 92 years without a single protest or claim to a different boundary. It was not until 1941 that a Louisiana Governor asserted a claim to the west bank, and he recognized that the claim would not stand if "there has been acquiescence." (Tex. Ex. C, 49; Ex. G, 67, 72). The record shows that this was but a temporary and passing fancy, never pursued with any type of possession or suit

which would interrupt Texas' prescription. *Michigan v. Wisconsin*, 270 U.S. 295, 313-319 (1926); *Indiana v. Kentucky*, 136 U.S. 479, 509-10 (1890). Neither did it interrupt Louisiana's acquiescence, because the State continued thereafter to make maps, oil and gas leases, bridge agreements, and right-of-way easements depicting the geographic middle of the Sabine as the boundary between the two States.

Even after the filing of this suit, Louisiana was still distributing copies of the maps made by that State in co-operation with the U.S. Geological Survey in 1957 (Affidavit of James H. Quick, Tex. Ex. B, 40; Ex. A, 27) and its 1970 State Highway Map (Tex. Ex. A, 49), which clearly depict the geographic middle of Sabine Lake as the boundary between the two States. Pictured at page 100 of Texas Exhibit E are both sides of the existing "State Line" sign erected in the center of the bridge across the Sabine on U.S. Hwy. 10, and at page 101 is the contract between the two States for the erection and maintenance thereof dated October 3, 1962. Louisiana has never levied or collected any taxes on railroad bridges, pipelines, utility lines, or oil and gas leases beyond the geographic middle of the Sabine, while Texas and its political subdivisions have collected taxes on such property on the west side of the geographic center of the Sabine continuously since 1905. (Tex. Ex. C, 27-64; Ex. G, 115-161). Clearly, this is a case where for more than 120 years before filing this suit the Louisiana Legislature and Louisiana officials have recognized, mapped and used the geographic center of the Sabine as the western boundary of the State contrary to the position now being taken by its attorneys in this case.

One specific act of recognition by the Louisiana Legislature contrary to its attorneys' present contentions should be noted. It is Resolution 212 passed by the Lou-

isiana Legislature on March 16, 1848, seeking consent of Congress to extend its boundary to the west bank of the Sabine (Full Text in Special Master's Report 16-17). Quoting only a portion of this Resolution 212, Louisiana's present counsel would lead the Court to believe that it was a claim or declaration of a then existing State boundary "on the west side of the Sabine River" (La. Exceptions Br., 33-36; 48), and that the purpose of the Resolution was merely to seek criminal jurisdiction over lands already within its boundaries. A full reading of the entire Resolution 212, rather than excerpts taken out of context, will demonstrate the inaccuracy of this interpretation. In fact, it means just the contrary and is one of the most conclusive documents in this case against the factual and legal contentions now being made by Louisiana against the Special Master's findings. The "Whereas" clause clearly recognizes that on March 16, 1848 "the Constitution and the Laws of the State of Louisiana" *did not* extend over "the waters of the Sabine River, from the middle of the stream to the western bank thereof," and it proposes that the "constitution and jurisdiction of the State of Louisiana shall be extended *over part of the United States*", embraced within such limits, "when- ever the consent of the Congress of the United States can be procured thereto . . ." This was a far cry from asserting a then existing boundary covering the western half of the Sabine. In fact, it was a complete recognition (1) that the area in controversy then was under the exclusive jurisdiction of the United States and not within the boundary of Louisiana and (2) that Congressional approval was essential before Louisiana could change its boundary to the west bank. Congress did not give its approval, but instead granted a similar petition of Texas, dated March 18, 1848 (Report, 17) authorizing Texas to extend its eastern boundary so as

to include the western half of the Sabine (Report, 18-19).

Louisiana asks the Court to take judicial knowledge of World War II, followed by the extended tidelands controversy during which it claims a "tacit" understanding that this boundary controversy would not be pushed, as a reason for excusing its acquiescence and failure to file a lawsuit since 1941. While each party perhaps had its own good reason to delay filing a suit against its neighboring State, we disclaim any agreement, tacit or otherwise, which would have prevented either State from filing a suit to resolve this question at an earlier date. The 92 years of prescription and acquiescence which had already run prior to 1941 simply continued until the date of this suit because Texas was in possession and had exercised jurisdiction over the west half of the Sabine continuously since 1849, and Louisiana was never in possession and never exercised any jurisdiction over the west half at any time during a total of more than 120 years. Its claim to the west bank, now asserted for the first time in a Court of law, is without merit and completely contrary to its previous acts of acquiescence and recognition of the geographic mid-stream boundary which was fixed by Acts of Congress for Louisiana in 1811 and for Texas in 1848. The Special Master correctly held, upon the great weight and preponderance of the evidence, that this line as fixed by Congress has been confirmed by prescription and acquiescence.

III

THE SPECIAL MASTER CORRECTLY HELD THAT THE BOUNDARY IS THE GEOGRAPHIC MIDDLE OF THE STREAM RATHER THAN THE THALWEG CENTER OF A MAIN NAVIGABLE CHANNEL. (In

reply to Louisiana's Exception No. 3 and Point "C" of Louisiana Brief).

There are four reasons why the thalweg rule does not apply to this water boundary, and the Special Master has discussed the law and the evidence with respect to three of them. (Report, 31-34). The history of, reasons for, and explicit exceptions to the thalweg rule clearly demonstrate its inapplicability to the Sabine boundary line between Texas and Louisiana, for the following reasons:

- A. The only basis for the Thalweg Rule is absent in this case, because free and common use of the entire river for navigation was reserved to the adjacent territories and future states by statutes and treaty.**

On navigable rivers, the original and more ancient rule calls for equal division of territory by use of a line equidistant from the river banks, and this is still the rule applicable to non-navigable rivers and to those navigable rivers in which a main channel is unknown or is not involved or alleged." The only reason for a change in the ancient rule was to assure the states bordering on a river equal use of the main channel of navigation. The Supreme Court stated in *Minnesota v. Wisconsin*, 252 U.S. 273, 282 (1920):

"The doctrine of Thalweg, a modification of the more ancient principle which required equal division of territory, was adopted in order to preserve to each State equality of right in the beneficial use of the stream as a means of communication. Accordingly, the middle of the principal channel of navigation is commonly accepted as the boundary."

¹¹II SHALOWITZ, COAST AND GEODETIC SURVEY, U. S. DEPARTMENT OF COMMERCE, *Shore and Sea Boundaries*, 374 (1962); *Georgia v. South Carolina*, 257 U.S. 516, 521 (1922); *Iowa v. Illinois*, 147 U.S. 1, 7-8 (1892).

In *Iowa v. Illinois*, 147 U.S. 1, 7-8 (1892), the Supreme Court held the thalweg doctrine for boundaries between States is based entirely upon this equitable principle: "The interest of each State in the navigation of the river admits of no other line. The preservation by each of its equal right in the navigation of the stream is the subject of paramount interest." However, the opinion includes the following quotation from CREASY, FIRST PLATFORM ON INTERNATIONAL LAW, 222, which indicates that the ancient geographic line is the *prima facie* line until the existence of a different main channel is alleged and proven:

"Formerly a line drawn along the middle of the water, the *medium filum aquae*, was regarded as the boundary line; and still will be regarded *prima facie* as the boundary line, except as to those parts of the river as to which it can be proved that the vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*. When this is the case, the middle of the channel of traffic is now considered to be the line of demarcation."

In the same case, the Court made it clear that the thalweg rule will not apply if it has been otherwise provided "by statute or usage of so great a length of time as to have acquired the force of law." This exception is also stated by the Court in *Arkansas v. Tennessee*, 246 U.S. 158, 170 (1918).

In *Georgia v. South Carolina*, 257 U.S. 516 (1922), the Supreme Court, then composed of eight of the same members who decided *Arkansas v. Tennessee*, supra, held that since equal rights of both States to navigation had been otherwise preserved, the reason for applying the thalweg doctrine was "out of the case." Therefore, the Court applied the more ancient general rule, deciding that the boundary line in the river was "midway between the banks of the stream."

In 1811, while the Territory of Orleans covered all lands from the Mississippi on the east to the Rio Grande on the west, Congress enacted a statute relating to the public lands in the Territories of Orleans and Louisiana, Section 12 of which provided:

"Section 12. *And be it further enacted*, That all Navigable rivers and waters in the Territories of Orleans and Louisiana, shall be, and forever remain, public highways."

In 1812, while the United States was still asserting its title to all lands between the Mississippi and the Rio Grande, Congress provided in the Act of Admission of the State of Louisiana" the following:

"Provided, That it shall be taken as a condition upon which the said state is incorporated in the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and territories of the United States, . . ."

Article 3 of the Treaty of 1819 between the United States and Spain contained the following provision:

"... the use of the Waters and the navigation of the Sabine to the Sea, and of the said Rivers, Roxo and Arkansas, throughout the extent of the said Boundary, on their respective Banks, shall be common to the respective inhabitants of both Nations."

"Act approved February 15, 1811, Appendix, Public Acts of Congress, 1811, 1296, 1302. A copy is in Plaintiff's Exhibit G, 47-50.

"2 Stat. 701, April 8, 1812; Tex. Br. App. 5-7.

"8 Stat. 252, Treaty of 1819, proclaimed February 22, 1821. Tex. Br. App., 9. This provision was carried forward in the Treaty with Mexico of 1828, 8 Stat. 372 (Tex. Br. App. 14).

Louisiana admits that under the above statutes and treaty the entire Sabine is free to uninterrupted navigation by the citizens of both States. It makes no allegation or argument that a boundary in the middle of a thalweg or a main channel of navigation is necessary to protect its rights of navigation. It is obvious that navigation is not an interest, much less the "paramount" or "controlling" interest so essential for the application of the thalweg doctrine.

Therefore, Texas submits that the Special Master has correctly held that the Supreme Court's decision in *Georgia v. South Carolina*, supra, is controlling and that the boundary should be determined to be in the geographic middle of the Sabine bodies of water, equidistant from the banks and shores, which is the location that has been recognized and followed by Congress, Federal agencies, and agencies of both States for more than 120 years.

This was also the holding of the Supreme Court of Louisiana in the second case of *State v. Burton*, 31 So. 291 (1902), a copy of which is in Plaintiff's Exhibit C, 21-22. In the first case of *State v. Burton*, 29 So. 970 (1901), the Supreme Court of Louisiana had held that the middle of the Sabine was the boundary between Texas and Louisiana. A copy of this decision is in Plaintiff's Exhibit B, 86. In the second case, referring to the meaning of the "middle" of the Sabine, the syllabus written by the Court said:

" 'The thread' of a stream is the line midway between the banks at the ordinary stage of water, without regard to the channel or the lowest and deepest part of the stream."

Louisiana departs from its thalweg claim in advocating that the boundary line should be drawn west of all islands, regardless of the location of the main chan-

nel, citing *Georgia v. South Carolina, supra*. There is a vital point which distinguishes that case from the present case. The boundary description between Georgia and South Carolina did not call for a "middle line" through the rivers involved. Instead, it specifically called for "the most northern branch" of the Savannah and Tugalo Rivers, and specifically reserved to Georgia (the State bounded on the South) "all islands in the rivers Savannah and Tugalo." This was the reason the Supreme Court determined that the geographic middle of the most northern branches of these rivers should be followed north of the islands so as to leave them in the State of Georgia. On the other hand, in 1811 Congress called for the Louisiana boundary to be "*a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude.*" The primary emphasis in the Act and all subsequent evidence of interpretations by the parties is on the "line to be drawn along the middle" so as to include one-half of the Sabine in Louisiana and one-half in Texas. This recognizes that where an island is encountered "by a line to be drawn along the middle of said river" the boundary runs in the western branch midway between the western bank of the river and the bank of the island.

The U. S. Geological Survey, acting in cooperation with the State of Louisiana, followed this rule in positioning the boundary in the branch of the Sabine west of Shell or Sabine Island where the Sabine River flows into Sabine Lake and in the center of the Narrows (west branch) in Orange County. These two instances are shown on the U.S.G.S. Quadrangles at pages 25 and 41, respectively, of Plaintiff's Exhibit A. We have no quarrel with Louisiana in the application of this rule so long as it does not seek to divert the line entirely away from the geographic middle line so as to encom-

pass islands which are not intercepted by the geographic middle line.

B. The United States, as common source proprietor, provided by statute for a geographic middle line in the Sabine.

In using the words "thence by a line to be drawn along the middle of said river" in the Enabling Act for creation of the State of Louisiana, approved February 20, 1811, there was no reason for Congress to intend anything other than a line along the geographic middle of the Sabine, because five days earlier it had already provided free access for navigation of the entire river in its Territorial Lands Act of February 15, 1811, *supra*.

The only possible basis for interpreting the language to mean the middle of a thalweg or main channel of navigation was absent, and this was confirmed in the Act of Admission, approved April 8, 1812, which contained both the boundary language above quoted and a reiteration that these "navigable rivers and waters . . . shall be common highways, and for ever free, as well to the inhabitants of the said state as to the inhabitants of other states and the territories of the United States . . .".

This was the construction given to the Sabine River boundary language of the aforesaid statutes when Congress passed the Act of July 5, 1848 (9 Stat. 245) consenting for Texas to "extend her eastern boundary so as to include within her limits *one half* of Sabine Pass, *one half* of Sabine Lake, *also one half* of Sabine River . . ." (Emphasis supplied). Obviously, these are mathematical terms indicating geographic halves of the river and have no relation to a thalweg or main channel of navigation. Such was the precise construction given to the Acts by the Senate Judiciary Committee Chairman, who reported:

"... The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore belonged to the United States, and was not included in the State of Louisiana. . . . The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas . . ."

Although enacted at different sessions of Congress, these Acts refer to the same boundary and should be considered in *pari materia* so long as the construction harmonizes and does not produce a conflict. *Red Lion Broadcasting Co. vs. F.C.C.*, 395 U.S. 367, 381; SUTHERLAND, STATUTORY CONSTRUCTION, Ch. 52, pp. 535-539; 50 AM.JR. §§ 349-350, pp. 345-349; 25 R.C.L. §§ 288, p. 1064.

C. The Geographic Middle Has Been Established by Prescription and Acquiescence.

The Special Master has correctly held that the geographic middle of the Sabine has been established under the doctrine of prescription and acquiescence (Report, 32-33). It is to this line that all of the evidence of prescription by Texas and acquiescence by Louisiana discussed in II, *supra*, applies.

The thalweg doctrine does not apply when it is established that there has been acquiescence in a long-continued assertion of dominion and jurisdiction over a given area and to a line other than the thalweg. *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1940); *Arkansas v. Tennessee*, 246 U.S. 158, 170 (1918); *Iowa v. Illinois*, 147 U.S. 1, 10 (1893).

*CONGRESSIONAL GLOBE, 1st. Sess., 30th Cong., New Series No. 56 at p. 882; Tex. Br. App., 23-24.

D. There was No Well-Defined or Habitually Used Main Channel of Navigation in Sabine Pass, Sabine Lake or Sabine River in 1812 or Thereafter until Man-Made channels Were Dredged, and Louisiana Has Failed to Allege Otherwise.

The fact that the evidence shows that there was no main channel of navigation in the Sabine in 1812 or thereafter until man-made channels were dredged is a reason for denying Louisiana's thalweg claim which the Special Master did not mention.

We take it from the quotations in *Iowa v. Illinois*, supra, that the burden is upon a state asserting the applicability of the thalweg doctrine to allege and show that there in fact exists a thalweg in which "vessels which navigate those parts keep their course habitually along some channel different from the *medium filum*." This also seems evident in the other thalweg cases cited above and in Louisiana's Exceptions Brief.

Louisiana has not alleged that in 1812 or at any subsequent date, there was a known thalweg or habitually used main channel of navigation different from the geographic middle of Sabine Pass, Sabine Lake or Sabine River. Texas alleged in its Reply to the Counterclaims of Louisiana (p. 8) that there was no such channel, and Louisiana failed to make any specific denial thereof. In reply to Texas' Requests for Admissions, Louisiana admits that between 1812 and the dredging of man-made channels neither the State nor any of its departments ever surveyed or mapped a thalweg or deepwater sailing channel in the Sabine; that no such channel has ever been used as the boundary line between Texas and Louisiana; and that the State and its departments do not have in their possession any map purporting to show a thalweg or deepwater channel of navigation in Sabine River, Sabine Lake or Sabine Pass as of 1812 or any date thereafter prior to the

dredging of a man-made channel. (Requests and Answers 1-7, filed with Special Master on or about Dec. 11, 1970).

Although it was not our burden to do so, Texas introduced the affidavit of an 81 year old witness who had navigated Sabine Lake, Sabine Pass and the lower end of Sabine River since 1887. He swore that "there was no main channel of navigation North and South across Sabine Lake," which "was about the same depth all the way across between points approximately one mile from the west shore to one-half mile from the East shore" and that there was no defined or habitually used navigation channel in Sabine Lake or in the River from there to Orange. "Boats simply sought and followed the deepest water at any given time, and the location changed from time to time, being influenced by frequent overflows." (Tex. Ex. G, 44-45). Texas also introduced affidavits and U. S. Corps of Engineer Reports for 1875, 1879, 1880, 1895 and 1897 showing the almost uniform shallow depths of Sabine Lake and Pass, all indicating that only shallow draft vessels could pass the bar at Sabine Pass and that the uniform depths of the Lake and Pass were such as to accommodate these vessels "on practically any course that they chose to follow." (Affidavit of R. C. Wisdom, Tex. Ex. G., 1-3; U.S.C. of E. Reports, Tex. Ex. G., 24-43). See also depths shown on U.S.G.S.-Louisiana maps 23, 25 and 27 in Texas Exhibit A.

In *Minnesota v. Wisconsin*, 252 U.S. 273, 282-83, this Court applied the geographic middle rule to this type of water area in Lower St. Louis Bay, and it is the only rule applicable where no thalweg or main channel of navigation is shown to exist.

Louisiana accuses Texas of an ulterior motive in wanting the geographic middle so that it will have a

better chance to claim both sides of the Sabine jetties when it comes time to determine the boundary between the two states in the Gulf of Mexico. (Louisiana Exceptions Brief, 85, 120). The record shows no evidence whatever of a thalweg channel at the mouth of the Sabine being more favorable or less favorable than the geographic middle for a beginning point from which to measure the common state boundary southward into the Gulf of Mexico. The newspaper article reproduced in Louisiana's brief at page 120 concerning the Texas Parks and Wildlife Department's claims and operations in the Gulf were completely unknown to and without the approval of the Attorney General of Texas. It has been stipulated that none of the proceedings in this suit shall relate to the common boundary in the Gulf of Mexico and that during such proceedings both parties would refrain from any activities which would put this seaward boundary in controversy. After Louisiana Attorney General Guste advised Texas Governor Preston Smith of the aforesaid newspaper article, the Attorney General of Texas advised the Director of the Texas Parks and Wildlife Department of the stipulation with Louisiana and stopped his operations in the area. This is evidenced by a letter from the Attorney General of Texas to the Governor of Texas dated June 30, 1972. A copy together with a transmittal letter was sent to the Attorney General of Louisiana. (Both are reproduced herein as Appendix A.) Perhaps the Louisiana Attorney General received these communications after his brief was sent to the printer.

IV

ALL QUESTIONS RELATING TO JURISDICTION OVER ALLEGED ISLANDS WEST OF THE GEOGRAPHIC MIDDLE OF THE SABINE SHOULD BE REFERRED TO THE SPECIAL MASTER FOR REPORT AFTER

THE COURT HAS DECIDED THE BASIC BOUNDARY ISSUES.

The Special Master recommends that if the Court approves his Report as to the boundary line, he should be authorized to hear additional evidence as to the presently existing islands in the Sabine west of the geographic middle line for the purpose of determining whether they are true islands; whether they existed in 1812; and whether they have been acquired by Texas under the doctrine of prescription and acquiescence. Texas concurs in this part of his Report as to islands but excepts to his finding prior to the taking of such further evidence, that any presently existing islands which existed in 1812 were then owned by or within the jurisdiction of Louisiana.

The description in the Enabling Act of 1811 "beginning at the mouth of the river Sabine; thence by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude" (and thence setting forth the remaining boundaries to the north, east and south) is subject to the interpretation given by the Special Master, to-wit: That it gave all islands of the Sabine, both within and without such specific boundaries, to Louisiana. On the other hand, it is likewise subject to the interpretation that "including all islands" simply referred to all islands within Sabine waters east of the line to be drawn along the middle of the river, which we concede as including those intercepted by such middle line. The latter is the practical interpretation which has been placed on this boundary Act for many years by Federal, Louisiana and Texas agencies and officials, and there is other evidence which Texas would like to offer bearing on the legal effect of this practical interpretation by the parties before the Court makes a final determination as to whether islands west of the geographic middle line and

outside of the boundaries of Louisiana were intended by Congress to be granted to Louisiana in 1812.

We concede that it is possible for a State to own or have jurisdiction over islands outside of and beyond its boundaries. See *United States v. Louisiana, et al*, 363 U.S. 1, 66-80 (1960). Congress had the power to grant Louisiana islands outside of the boundaries which circumscribed the new State, but we do not believe this was the intention of the phrase "including all islands" as used in the Act of 1811. For instance, although the language may appear as surplusage if it only referred to islands east of or intercepted by the geographic middle line, it has been held that such is not the case. In both *Moss v. Ramey*, 239 U.S. 538 (1916) and *Scott v. Lattig*, 227 U.S. 229 (1913), this Court held that islands on the Idaho side of the navigable Snake River at the time of Idaho's admission to the Union were not a part of the bed of the stream or land under water, and therefore their "ownership did not pass to the State, or come within the disposing influence of its laws." In *Scott*, it was further said at 244:

"On the contrary, although surrounded by the waters of the river and widely separated from the shore, it was fast dry land, and therefore remained the property of the United States and subject to disposal under its laws . . ."

There are many instances of water boundaries whose limits clearly encompass islands to which there have been added specific references showing that the limits include *all islands* within such water boundaries. An example is found in the 1819 Treaty with Spain wherein the boundary of the United States was fixed at the west bank of the Sabine and the south banks of the Red and Arkansas Rivers, clearly placing all of such waters and their encompassed islands within the United

States, but to this description was added the specific provision that "all of the Islands in the Sabine and the said Red and Arkansas Rivers throughout the Course thus described, to belong to the United States." (Tex. Br. App., 7-9). Also, the boundary agreement between Georgia and South Carolina was specifically fixed as the northern branches of the Savannah and Tugalo Rivers, clearly leaving all islands to the south in Georgia, but a specific provision was added "reserving all the islands in the said rivers Savannah and Tugalo to Georgia."

The phrase in the 1811 Enabling Act "including all islands" is clearly secondary to the middle line and refers only to all islands east of the middle line and within the boundaries described in the Act. This was the precise interpretation placed on the "including all islands" phrase by the Attorney General of Louisiana in a previous brief filed in this Court in *U.S. v. Louisiana et al*, No. 10 Original," in which it was said:

"Those *limits* include all islands eastward of the middle of the River Sabine to the thirty-second degree latitude and also all islands within three leagues of the coast in the Gulf of Mexico." (22-23)

"However, the reference to the inclusion of islands within the limits of the state, whether in the east half of the River Sabine or within three leagues of the Gulf coast, should not confuse one's thinking with the fact that by boundary description in the Congressional Enabling Act of 1811, the 1812 Louisiana Constitution, and again in the Congressional Act of Admission of April 8, 1812, the purpose was to fix the territorial limits of the

"Louisiana's Supplemental Brief in Opposition to Motion for Judgment, pp. 22-24, *U.S. v. Louisiana, et al*, No. 10, Original, October Term, 1959. See quotations therefrom printed at pages 31-33, Brief for the State of Texas in Support of Motion for Judgment.

State of Louisiana, both landward and seaward and to include all islands within said limits." (24)

Complete reservation of this island question will involve very little of the land in controversy. Perhaps the extent of these small areas and our position concerning them would best be understood by observing the map of Sabine Lake prepared by the U.S. Geological Survey in cooperation with the State of Louisiana in 1957. (Tex. Ex. A, 25). The geographic mid-stream boundary is positioned by the black dashed line drawn through the Lake and into Middle Pass of the Sabine River. To the left and about four miles west of this line will be seen the point where the Neches River empties into Sabine Lake. Here will be observed a small speck designated as Dooms Island (formerly called Johns Island), which is the first mentioned by the Special Master as being claimed by Louisiana (Report, 35-36). "To the north is Stewts Island, which was a part of the mainland until it was cut off by the Intra-coastal Canal, and between Stewts and the Middle Pass (also called West Pass or West Fork) of the Sabine River is a line of spoil banks or man-made islands (such as Sydney Island) created by dredging of the deep-water Canal." If the Court approves the Special Master's finding as to the geographic mid-stream boundary, Louisiana apparently asserts no title to these artificial man-made "islands" or spoil banks. However, Louisiana does assert title to two small delta "islands", which Texas considers battures, shell banks or appendages of the shore, lying west of the geographic middle line as depicted by the U.S.G.S. and the State

"This four-acre "island" or shell bank was once considered by Texas as a part of the mainland and was actually surveyed and patented as part of a mainland grant. (Tex. Ex. K, 1-14). The testimony shows that it no longer exists. New Orleans Hearing Transcript, 243-300; 554-557.

"Tex. Ex. K, 10-11.

of Louisiana on the map above referred to. Together, these two areas appear to cover less than 100 acres. These are the only "islands" referred to by the Special Master and the only ones about which Texas is informed of any controversy.

The Special Master recognizes that even if these alleged "islands" existed in 1812 and were then granted to Louisiana, there is a possibility that they have since come under the jurisdiction and ownership of Texas by prescription and acquiescence and that he should be authorized to hear further evidence concerning them if and after the Court approves his basic boundary findings. It just so happens that these two appendages in the delta of the Sabine River border upon a portion of the geographic mid-stream boundary which has not only been marked on the U.S.G.S. and Louisiana maps since 1932, but which has been used by both States in metes and bounds descriptions of oil and gas leases which they have issued on each side of this recognized position of the boundary line. On April 21, 1938, Louisiana executed its mineral lease, signed by the Governor, to Humble Oil & Refining Company, covering the north 10,000 acres of the east half of Sabine Lake with attached field notes calling for the center of Middle Pass(West Fork) as its western boundary and as the eastern boundary of the State of Texas. (Tex. Ex. D, 15-19). The attached field note calls begin at the southeast corner of the lease on the east shore of Sabine Lake and thence run west to "the center of Sabine Lake, same being the Texas-Louisiana boundary as set out in an Act, approved July 5, 1848 . . . giving the consent of the Government of the United States to the State of Texas to extend her eastern boundary . . . Thence in a northeasterly direction with the center of said Lake to the mouth of the West Fork [same as Middle Pass] of Sabine River . . ." There was attached

a U.S.G.S.-Louisiana map showing this precise boundary line as shown on the map hereinabove referred to. (Tex. Ex. D, 17-19).

On the west side of this line, Texas executed a mineral lease on its Tract No. 3 to the Texas Company in 1958, which extended to the middle of Middle Pass (also known as West Pass or Fork) and including the two alleged islands in question west of Middle Pass. (See Map, Tex. Ex. F, 32; New Orleans Hearing Transcript, R. C. Wisdom's testimony, pp. 552-555).

Louisiana's alternative claim to title or jurisdiction over these small alleged islands came late in the development of this case. It was first made known to Texas at the oral arguments on Motion for Judgment in Houston on December 16, 1970. Texas included a partial reply in a letter to the Special Master, with attached exhibits, dated December 31, 1971 (Tex. Ex. J and K), and with some evidence of prescription and acquiescence in the subsequent New Orleans hearing (New Orleans Hearing Transcript, pp. 524-576). However, the issues as to these small alleged islands have not been thoroughly developed or briefed, it being Texas' contention from the beginning that if any such controversy should arise, the matter should be reserved for a future hearing after a decision on the basic boundary issues. (Plf. Reply Brief of December 10, 1970, pp. 30-31).

The answer to the question of what Congress intended in 1811 with respect to islands west of and outside the specific boundaries set forth for the State of Louisiana may depend to a great extent upon the subsequent practical interpretation of the boundary language by Federal agencies and the two States. Since this is proposed to be developed in subsequent hearings by the Special Master with reference to prescription

and acquiescence, there is good reason to reserve the entire question of initial and present ownership and jurisdiction over these small areas until additional evidence and briefs can be submitted at the proposed subsequent hearings.

RECOMMENDATION AS TO SURVEYING THE BOUNDARY

If the Special Master's basic boundary findings are approved by the Court and if the parties are unable to agree upon the location of the "geographic middle" of the Sabine within 30 days after the Court's order of approval, the Master recommends that he be authorized to make a survey thereof with the assistance of the U.S. Geological Survey, with the costs to be equally divided between the two States. Texas has no objection to this procedure, but we offer an alternative which would conform to the practical line which has been used by the States for many years and which would provide for a future survey only as to those portions of the boundary on which the parties cannot agree.

The alternative comes from the solution used by this Court in *Louisiana v. Mississippi*, 202 U.S. 1, 59 (1906), a water boundary case won by Louisiana largely upon proof of an existing boundary line depicted on the charts of the U.S. Coast and Geodetic Survey. The Court decreed the water boundary to be "as delineated on the following map, made up of the parts of charts Nos. 190 and 191 of the United States Coast and Geodetic Survey, embracing the particular locality." In the present case, we have in evidence official maps of the U.S. Geological Survey made in cooperation with the State of Louisiana beginning in 1932, which depict the geographic middle line of the entire Sabine from its mouth on the Gulf to the thirty-second degree of north latitude (Tex. Ex. A, 3-15, 26-

39, 40-45). These maps were found by the Special Master to "have been used extensively by both Texas and Louisiana as a basis for their maps." (Report, 33). In order that both States may continue the use of these maps with respect to the area in controversy until there is some need for additional surveying on a portion of the boundary, our alternative suggestion would be for a judgment and decree along the following lines:

"That the geographic middle of Sabine Pass, Sabine Lake and Sabine River from the mouth of Sabine Pass north to the thirty-second degree of north latitude, as depicted on the 1957 series of Sabine River Quadrangles prepared and published by the U.S. Geological Survey in cooperation with the State of Louisiana shall be the location of the boundary line between the two States unless and until either State petitions this Court, within one year of the date of this order, for a more definite survey of the location of any portion of said boundary. The Court retains jurisdiction of the case for such further orders as may be necessary in accordance herewith."

PRAYER

WHEREFORE, the State of Texas prays that the Report of the Special Master be in all things adopted and approved as the judgment of the Court, with the above alternative as to future surveys, and except for determination of the following matters in a subsequent report:

- (1) Whether any presently existing islands in the western half of the Sabine were in existence in 1812, and if so, whether they were initially incorporated by Congress into and as a part of the State of Louisiana.
- (2) Whether Texas has title to or jurisdiction over any such islands by reason of the Act of July 5, 1848

(9 Stat. 245) or by reason of prescription and acquiescence.

Respectfully submitted,
CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

HOUGHTON BROWNLEE, JR.

J. ARTHUR SANDLIN

JAMES H. QUICK
Assistant Attorneys General

August, 1972

CERTIFICATE

I, Crawford C. Martin, Attorney General of Texas, a member in good standing of the Bar of the Supreme Court of the United States, hereby certify that on the — day of August, 1972, I served copies of the foregoing Brief of the State of Texas in Support of the Report of Special Master by first class mail, postage prepaid, to the offices of the Governor and Attorney General, respectively, of the State of Louisiana.

CRAWFORD C. MARTIN
Attorney General of Texas

APPENDIX A
THE ATTORNEY GENERAL
OF TEXAS

Austin, Texas 78711

June 30, 1972

Honorable Preston Smith
Governor of Texas
Capitol Building
Austin, Texas 78711

**Re: Texas v. Louisiana, Boundary
dispute, offshore area**

Dear Governor Smith:

We have received the letter directed to you by Attorney General Guste of Louisiana under date of June 21, 1972, protesting the statements of the Director of our Parks and Wildlife Department that the Department intended to exercise regulatory jurisdiction over the east jetty at the gulfward mouth of Sabine Pass. We have looked into this matter and have discussed it with Mr. James U. Cross, the Executive Director of the Parks and Wildlife Department and make to you the following report:

(1) The assertions contained in the June 21st letter from Louisiana Attorney General Guste are substantially correct insofar as they relate to the present posture of the litigation between Louisiana and Texas and insofar as they relate to the fact that Texas and Louisiana mutually agreed that the disputed area gulfward from Sabine Pass was not to be decided in the present controversy and was to be settled later after the inshore boundary had been fixed by final judgment. By this agreement, neither state waived any claim in the disputed area. Neither Texas nor Louisiana should be doing anything in the disputed area different from what has been done in the past, whatever that may have been.

(2) In discussions yesterday between Mr. Robert Flowers of our office and Mr. James U. Cross, the situation was explained, and Mr. Cross assured us that until the gulfward claims are resolved the Texas Parks and Wildlife Department will not attempt to conduct any further operations in the disputed area.

We believe that Mr. Cross's statements reported in the Beaumont paper were due to a perfectly understandable misunderstanding of the nature of the present litigation, and his cooperation as assured to us in yesterday's conversation with him should be sufficient to allow a reassurance to the Attorney General of Louisiana that Texas will abide by its agreement as to operations in or upon any of the disputed area in the Gulf south of the mouth of Sabine River.

We presume that this will be sufficient to conclude this matter, but if further action is necessary, we are at your service to effect whatever is necessary to protect the rights of Texas and forestall any change in the status of the present litigation between Texas and Louisiana.

Sincerely yours,

CRAWFORD C. MARTIN

CCM:vg

cc: James U. Cross
Executive Director
Texas Parks and Wildlife Department
John H. Reagan Building
Austin, Texas 78711

July 3, 1972

Honorable William J. Guste, Jr.
Attorney General of Louisiana
Department of Justice
Baton Rouge, Louisiana 70804

Dear General Guste:

Attached is a letter which we believe is self-explanatory, from the Attorney General of Texas to Governor Preston Smith in response to our inquiry relative to your letter of June 21, 1972.

If we can be of further assistance in this regard please let us know.

Sincerely,

HAWTHORNE PHILLIPS
Legal Counsel to the Governor

HP/rg

Attach.

bcc: Carlton Carl

LE COPY
(D)

No. 36, Original

Supreme Court, U. S.
FILED

DEC 5 1972

MICHAEL RODAK, JR., CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**REBUTTAL BRIEF OF THE STATE OF
LOUISIANA IN ANSWER TO THE BRIEF OF
THE STATE OF TEXAS IN SUPPORT OF
THE SPECIAL MASTER'S REPORT**

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Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General.

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Attorney General.

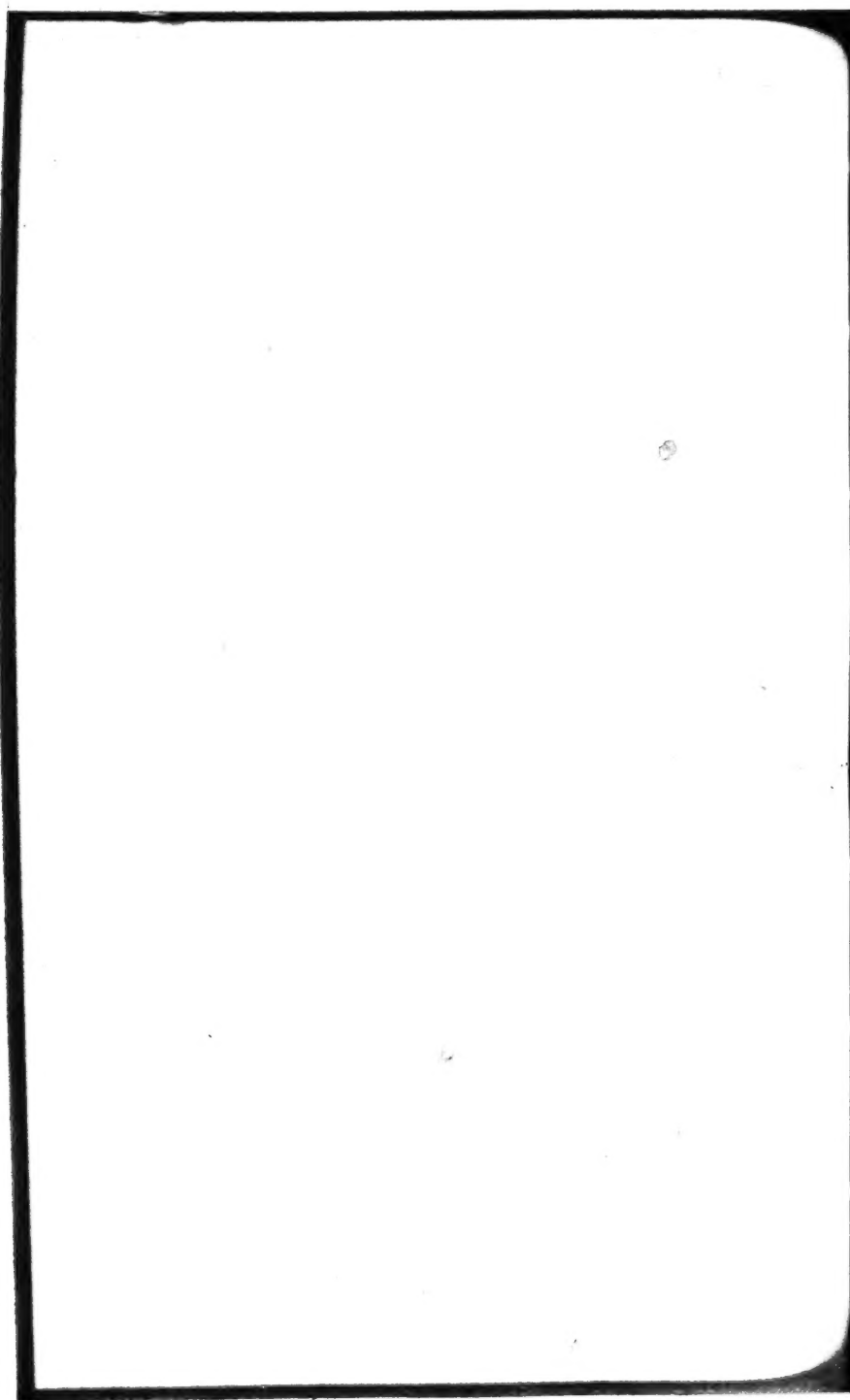
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OLIVER P. STOCKWELL,
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No. 36, Original

In the

Supreme Court of the United States

OCTOBER TERM, 1969

THE STATE OF TEXAS,

Plaintiff,

v.

THE STATE OF LOUISIANA,

Defendant.

**REBUTTAL BRIEF OF THE STATE OF
LOUISIANA IN ANSWER TO THE BRIEF OF
THE STATE OF TEXAS IN SUPPORT OF
THE SPECIAL MASTER'S REPORT**

PRELIMINARY STATEMENT

While there have been several briefs written by both sides of this controversy, nevertheless, in view of the importance of this case in establishing the boundary between the State of Texas ("Texas") and the State of Louisiana, ("Louisiana"), and the effect that it may have on other cases decided and to be decided by this Court, establishing boundaries between other states where a navigable stream is involved, we are taking the liberty of filing this additional brief, with the hope that it may, with clarity, pinpoint the issues to be decided by the Court in this case.

POINT I

Texas, in filing this suit, limited the portion of

the boundary to be settled from the Gulf of Mexico to the 32nd degree of north latitude. The decision in this case will fix the point of departure and direction of the lateral boundary between Texas and Louisiana separating Louisiana's three marine miles submerged land claim from Texas' three league historical boundary in the Gulf. As to the remainder of the boundary from the 32nd degree of north latitude to the 33rd degree of north latitude, the Special Master ruled, in a memorandum opinion dated March 25, 1971, "The northern part of the boundary between the States [Texas and Louisiana] beginning at the Sabine River, has been established. Such is not now before the Special Master. The only disputed boundary involved in this case is that on the Sabine River."

(Insert ours) This means Louisiana's boundary from the 32nd degree north latitude to the 33rd degree of north latitude commences on the *west* bank of the Sabine River, and extends north along the Treaty Boundary of 1819.¹ If the report of the Special Master is accepted, there will be a jog in Louisiana's western boundary where the 32nd degree of north latitude intersects the Sabine River.

According to the findings of the Special Master, the southern portion of the boundary commencing at

¹ The "Treaty Boundary of 1819" and "Treaty of 1819" both refer to the Treaty of Amity, Settlement and Limits between Spain and the United States in 1819. When we refer herein to the Treaty Boundary of 1819, it includes the boundary as confirmed by the treaty between the United States and Mexico in 1828, between the United States and the Republic of Texas in 1838 and the boundary as surveyed and staked in 1840-41.

the 32nd degree of north latitude would commence in the geographic middle of the Sabine, whereas, the boundary of Louisiana north from the 32nd degree of north latitude would start on the west bank of the Sabine River. The anomaly of this ruling is that Louisiana's boundary from the 32nd degree of north latitude to the 33rd degree of north latitude follows the Treaty Boundary of 1819, and not the language contained in Louisiana's Constitution of 1812, on which Texas relies, while, according to the ruling of the Special Master, Louisiana is bound by the language of the Constitution of 1812, from the 32nd degree of north latitude south to the Gulf of Mexico, and is not entitled to the Treaty Boundary of 1819, as to that portion of its boundary.

POINT II

Another anomaly in this case is: Why does Texas, at this late hour, disclaim its tacit understanding with Louisiana not to push the boundary settlement pending litigation on the Tidelands issue? Texas, at page 32 of its brief stated:

"Louisiana asks the Court to take judicial knowledge of World War II, followed by the extended tidelands controversy during which it claims a 'tacit' understanding that this boundary controversy would not be pushed, as a reason for excusing its acquiescence and failure to file a lawsuit since 1941. While each party perhaps had its own good reason to delay filing a suit against its neighboring State, we disclaim any agreement, tacit or otherwise, which would have

prevented either State from filing a suit to resolve this question at an earlier date."

This statement cannot be reconciled with the evidence in the record.

Texas introduced in evidence as Exhibit "C", Item 13, a letter from Bolivar E. Kemp, former Attorney General of Louisiana, addressed to Price Daniel, then Attorney General of Texas, dated May 1, 1951, in which it was stated in the concluding paragraph:

"In conclusion, I might state that, informally, some few years ago, Mr. Madeen [Madden] mentioned the question to one or more officials of your state. It was their view, Mr. Madden informs me, that no action be taken until the settlement of the Tidelands controversy."

This letter of Mr. Kemp was written to Mr. Daniel in answer to a letter of Mr. Daniel, dated April 24, 1951, stating that it had come to his attention that Louisiana was asserting claim to the entire bed of the Sabine. It must be remembered that Governor Jones wrote the Governor of Texas in 1941, officially claiming, on behalf of Louisiana, the entire bed of the Sabine to the west bank. The letter of Bolivar Kemp confirmed that Louisiana was claiming to the west bank, and mentioned the correspondence of 1941. Before Bolivar Kemp inserted the concluding paragraph quoted above, he mentioned that, until trespasses had been made on its land, there would be no occasion to litigate the question.

When the present case was being argued before Judge Van Pelt, on December 16, 1970, Oliver P. Stockwell, one of the attorneys for Louisiana, in the presence of Mr. Daniel, stated:

"That is correct. But I would like to make this observation, that in Mr. Daniel's brief and in some of these exhibits they refer to actions that were taken by Louisiana in this Tideland litigation. Now you will find in even Mr. Daniel's exhibits a letter from Bolivar Kemp, who was Attorney General, that it was his impression while this Tideland litigation was pending which started in 1949 they were not going to try to adjust this boundary. I think Mr. Daniel will admit that. In other words, they didn't want to get this boundary between the two states involved in this litigation." [referring to the Tideland litigation] (Tr. pp. 78, 80 and 81.)

Again it was stated by Oliver P. Stockwell:

"If I might speak a little on acquiescence, of course the question of Port Arthur—most of this has been done since 1941, and during this period when we had this kind of understanding of not doing anything—they can't argue that they didn't know Louisiana's position then because the Governor wrote the Governor of another sovereign state, putting them on notice." (Tr. p. 107).

These remarks were not then disputed by Mr. Daniel.

Mr. Bonnacarrere, Secretary to the Mineral Board of the State of Louisiana, in his testimony, particularly at pages 141, 146, 148, 236 and 237, emphasized

the fact that there was a tentative agreement that no action would be taken on the Texas-Louisiana boundary until the Tidelands litigation was concluded. It must be remembered that Texas filed this suit *after* its Tidelands claim had been adjudicated by this Court, although Louisiana was and still is involved in litigation over its Tidelands.

Texas must consider its plea of acquiescence and prescription is on shaky grounds because most of the acts relied on by Texas took place *after* Governor Jones' letter in 1941.

POINT III

Another anomaly in this case is the holding by the Special Master that the portion of the boundary involved in this suit is in the geographic middle of the Sabine, which is contrary to the ruling of this Court in *State of Louisiana v. State of Mississippi*, 202 U.S. 1, 26 S.Ct. 405, 50 L.Ed. 913 (1906), which involved the interpretation of the same Constitution of Louisiana as it related to its eastern boundary. This Court, in that case, in establishing the boundary between Mississippi and Louisiana, interpreted the phrase, "in the middle of", as being in the "thalweg", and established the boundary between Mississippi and Louisiana in the deep water sailing channel. The Court also held that the "thalweg" doctrine applied to lakes, estuaries and bays and made it clear that once title had vested in Louisiana, Congress was powerless to deprive Louisiana of any of its territories without the consent of the Legislature of Louisiana.

POINT I: ARGUMENT

For the Court to fully appreciate the various actions taken by the United States and Louisiana during the early history of this boundary dispute, it is necessary to consider the topography and habitation of the area involved. Louisiana Exhibit K, Items 2, 7, 10 and 12 shows the land along the eastern shore of Sabine Pass, Sabine Lake and the lower end of Sabine River as low and marshy. From the survey plat made in 1901,² the Court will observe that towns were on the west bank of Sabine Pass, Sabine Lake and the lower Sabine River, but none exist on the east bank in this area. This is true even today, as the plats will show. On the west bank are the towns of Sabine City, Port Arthur, Orange and other smaller settlements.

Shortly after the Treaty of 1819, the Legislature of Louisiana adopted a resolution, in 1820, approved on March 16, 1820, providing:

"11. La. A., 1820, Resolution, p. 126 Approved March 16, 1820.

That the Governor be requested to correspond with the President of the United States, on the subject of running off and marking the western and northern boundary line of the State of Louisiana, to wit: the line beginning on the Sabine river, at the thirty-second degree of north latitude, thence running north to the northern most part of the thirty-third degree of latitude, thence along

² Louisiana Exhibit K, Item 7.

the same parallel of latitude of the Mississippi river."

This resolution referred to the landed portion of the boundary, which is now recognized as corresponding to the Treaty of 1819 boundary. There was no need at that time to survey the water boundary for Louisiana owned the bed of the Sabine as a sovereign state.

As we have already pointed out in our prior briefs, when the Parish of Caddo was created in 1838 (La. Ex. A, Item 16), the western boundary was established along the "boundary line of the United States", which was the Treaty Boundary of 1819. When the Parish of Sabine was created on March 7, 1843 (La. Ex. A, Item 18), the western boundary was on the west bank of the Sabine, following the line between the United States and the Republic of Texas, which was the Treaty Boundary of 1819. This was true also when the Parish of DeSoto was created in 1843 (La. Ex. A, Item 17). These were all *before* Texas was admitted into the Union as a state in 1845. These acts firmly established that the Louisiana Legislature accepted and recognized as its boundary the Treaty Boundary of 1819.

In our prior briefs, we have discussed the area known as the "neutral zone" created in 1806 by agreement between the United States and Spain,³ which lasted until the Treaty of 1819. This neutral zone en-

³ For a history of the "neutral zone" and the actions of the United States and Louisiana during this period of time, see Louisiana's brief in support of its exceptions to the report of the Special Master, particularly "Argument Point A".

compassed the portion of Louisiana's boundary involved in this suit.

Texas and the Special Master have ignored the effect of this agreement on the western boundary of Louisiana. This agreement was in effect when Louisiana was admitted as a state in 1812, and the admission of Louisiana as a state was subject to this prior agreement; this accounts for the fact that Louisiana was not able, until after the Treaty of 1819, to exercise any jurisdiction over this area.⁴ Congressman Poindexter stated it was up to the United States and Spain to settle the western boundary which would then become the permanent boundary of Louisiana.

This was a wild and ungoverned area, as the Court will observe in reading the article by Mr. Haggard.⁵ We have also taken the liberty of including in the appendix of this brief a chapter out of the biography of John A. Murrell by Ross Phares, which was published in 1941, entitled "Reverend Devil". The chapter is entitled, "The Free State of Sabine", the title given to the neutral zone. We have also included in the appendix an article by Leon Sugar on the same subject.

As the Court will observe in reading our prior briefs, the lands in the neutral zone were not patented until *after* 1820. Louisiana, recognizing the necessity

⁴ When the admission of Louisiana was debated in the U.S. Congress this agreement was recognized as binding on the United States and Spain and the admission of Louisiana as a state was subject to the agreement. (Louisiana Exhibit F, Item 5, p. 57)

⁵ Louisiana Exhibit C, Item 2.

to settle this area, passed the following resolution on March 25, 1824:

"Whereas from the topographical situation of this state, the defence afforded by the military force placed on our western frontier must be partial, and can effectually protect but a small part of the line of invasion, and whereas further, the only way to remedy that is to hold out advantages to the settlers of that part of the state generally known under the name of *neutral ground*.

"Resolved by the Senate and House of Representatives of the state of Louisiana, in General Assembly convened; That our Senators and Representatives in Congress be instructed to use their utmost endeavors to have a speedy confirmation of the claims filed with the said commissioners at Natchitoches, in December last and calling for lands definitively acted upon by congress within the said neutral ground, and that the secretary of state be directed to transmit to the said senators and representatives copies of this resolution.

"Approved, March 25, 1824." (Emphasis ours)
Surveys were then made and land patented in the neutral zone.⁶

When the boundary survey was made in 1840-1841, Mr. Overton, representing the United States, made observations concerning the lawlessness along the boundary being considered.⁷ All of this is important when this Court considers what the Legisla-

⁶ Louisiana Exhibit C, Item 3.

⁷ Louisiana Exhibit A, Item 13.

ture of Louisiana had in mind when it passed Resolution No. 212, approved on March 16, 1848 (La. Ex. A, Item 19). The preamble of the resolution states:

"Whereas the constitution and the laws^{*} of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof; and that it is of importance to the citizens living contiguous thereto, and to the people in general, that the *jurisdiction of some State* should be extended over said territory, in order that crimes and offences committed thereupon should be redressed in a speedy and convenient manner." (Emphasis ours)

It is easy to understand why the Legislature felt this action should be taken, for the *jurisdiction* of Louisiana, as fixed by the language of the Constitution of 1812, extended only to the middle of the Sabine. There existed a serious question as to whether Louisiana could enforce its criminal laws in the west half of the Sabine, although Louisiana's boundary extended to the west bank, as fixed in the Treaty of 1819. The resolution then goes on to provide:

"Therefore be it resolved by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, 1st. That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United

^{*} In the preamble the Legislature was talking about the language of laws and the Constitution and not about Louisiana's western boundary, which, later in the same resolution, the Legislature recognized as being on the west bank of the Sabine.

States, embraced in the following limits (when-
ever the consent of the Congress of the United
States can be procured thereto,) viz: Between
the middle of the Sabine river and the western
bank thereof, to begin at the mouth of said river
where it empties into the Gulf of Mexico, and
thence to continue along the said western bank
to the place where it intersects the thirty-second
degree of north latitude, *it being the boundary
line between the said State of Louisiana and the
State of Texas.*" (Emphasis ours)

Here, again, the Legislature was recognizing that
the boundary line between Louisiana and Texas was
on the west bank of the Sabine, but that the jurisdic-
tion of Louisiana, as fixed by the language in its Con-
stitution of 1812, only extended to the middle of the
Sabine, but it extended jurisdiction to the west bank
subject to the consent of Congress.

The Court will recall that the inhabitants on both
sides of the Sabine, by virtue of the Treaty of 1819,
were entitled to the use and navigation of the water,
while by the same treaty the ownership of the river
was vested exclusively in the United States and thereby
in Louisiana, the most westerly state, to the left bank.
This situation, agreed upon in a solemn pact, did none-
theless pose questions of police jurisdiction.* The fact
that the Legislature stated, "shall be extended over part

* The Republic of Texas, distinguishing customs inspec-
tion on waters of the Sabine River from legal ownership of the
River, acknowledged thereby that any jurisdictional act or
series of acts would in no way imply at any future time owner-
ship by means of prescription. See the February 10, 1845, letter
of the Secretary of State for the Republic of Texas to A. J.
Donelson, U. S. Charge d'Affaires at the Texas Capitol. See
Appendix A.

of the United States" did not, in any way, mean the Legislature did not recognize Louisiana's boundary as fixed on the west bank of the Sabine, for, actually, the whole of Louisiana forms part of the United States.*

The resolution then requested the Louisiana Senators to ask Congress for permission for such extension. It is important to consider that in the resolution actually passed, it provides, in the last line in the second paragraph of the resolving portion of the resolution, "boundary line between the State of Louisiana and the State of Texas." In a copy of the resolution filed with the Congress, the "State of Texas" was left out.¹⁰

Recognizing the necessity for some established jurisdiction over the west half of the Sabine, the Legislature of Texas passed a resolution, approved March 18, 1848, to instruct its Senators and Representatives to use their best efforts to have Congress pass an act "extending the *jurisdiction* of Texas over half of the waters of Sabine Lake, Sabine Pass, Sabine River, up to the 33rd degree of north latitude." (Emphasis ours) Here, again, the Legislature of Texas was referring to "jurisdiction" over half of the waters of the Sabine, over which both Louisiana and Texas had concurrent

* To understand the intent of the Louisiana Legislature one can by analogy see that a coastal state owns at least three miles of area into the sea; yet this area is patrolled not by the State Police but rather by the United States Coast Guard. Conceivably waterborne federal police could have exercised special jurisdiction over the part of Louisiana's territory between the middle of the river and the west bank—without any derogation of Louisiana's ownership. Instead the lawmakers wished it to be policed by state authorities applying state laws upon this internal waterway.

¹⁰ Louisiana Exhibit A, Item 19, p. 288-A.

jurisdiction, under the provisions of the Treaty of 1819. Nothing is said about acquiring title to the west half of the Sabine.

Texas now urges that the Act of Congress which was accepted by Texas actually extended its boundary to the west half of the Sabine, depriving Louisiana of title thereto. While certain Louisiana Senators seemingly made no objection to the extension of jurisdiction of Texas over the west half of the Sabine, there was no consent by the Louisiana Legislature to changing the boundary of Louisiana from the west bank of the Sabine, as established by the Treaty of 1819, to the middle of the Sabine and any Act of Congress purporting to have this effect would be unconstitutional under the doctrine announced by this Court in the case of *State of Louisiana v. State of Mississippi*, supra.

There were settlements on the west bank of Sabine Pass, Lake, and River and Texas was in a much better position to police the west half of the Sabine than Louisiana, which had no settlements along these banks. Resolution No. 212 of the Louisiana Legislature of 1848, filed with Congress, firmly established Louisiana's boundary claim to the west bank.

Texas urged, and the Special Master found, that the United States was saving the west half of the Sabine to give to Texas when it was finally admitted into the Union. In our brief, we pointed out that the boundary of Texas and Oklahoma along the Red River is the 1819 Treaty Boundary, which is fixed on the south bank of the Red River, and not in the middle of the stream. Texas attempts to distinguish this situa-

tion from that in this case by urging that the Red River at this junction is non-navigable, whereas, both parties here have admitted that the Sabine is a navigable stream. While we do not agree with this distinction, such an argument certainly cannot be made with reference to that portion of the Red River which forms a part of the boundary between Arkansas and Texas.

The Arkansas Territory was formed by Act of March 2, 1819, effective July 4, 1819, from a part of the Missouri Territory. In 1824 an act was passed by Congress fixing the western boundary of the territory as follows:

" the western boundary line of the territory of Arkansas shall begin at a point forty miles west of the southwest corner of the State of Missouri and run south to the right bank of the Red River, and thence down the river and with the Mexican boundary,¹¹ to the line of the State of Louisiana."

Congress, in 1824, after the Treaty of 1819, considered that the line of Louisiana coincided with the boundary of Mexico, as established by the Treaty of 1819. Arkansas was admitted as a state on June 15, 1836. The enabling act approved on that date, describes the boundary as follows:

"beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude, running from thence west, with the said parallel of latitude, to the Saint Francis river; thence up the middle of the main

¹¹ This was the Treaty Boundary of 1819.

channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red River, by the lines described in the first article of the treaty between the United States and the Cherokee nation of Indians, west of the Mississippi, made and concluded at the city of Washington, on the 26th day of May, in the year of our Lord one thousand eight hundred and twenty-eight; *and to be bounded on the south side of Red River by the Mexican boundary line*, to the northwest corner of the State of Louisiana; thence east with the Louisiana State line, to the middle of the main channel of the Mississippi; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning." (Emphasis ours)

Congress, in passing this enabling act, recognized that Arkansas was bounded on the south side of the Red River, by the Mexican boundary line "to the northwest corner of the State of Louisiana; thence east with the Louisiana State line, to the middle of the main channel of the Mississippi River". This is just another instance in which Congress treated the Mexican boundary as coinciding with the western boundary of Louisiana and another instance in which the United States gave to the State of Arkansas the total of the Red River to its south bank. Again, this was *after* the Treaty of 1819 when the boundary had been settled first between Spain and the United States and, subsequently, Mexico and the United States.

In the case of *State of Oklahoma v. State of Texas*,

258 U.S. 574, 42 S.Ct. 406, 66 L.Ed. 771 (1921), the Court found "Lanesport, Ark., which is near the Oklahoma boundary, has been the usual head of navigation. . . ." This means this portion of the Red River was navigable.

The United States did not reserve the south half of the navigable portions of the Red River for a future state to be formed to the south, such as Texas. This establishes that there is no merit to Texas' claim that the United States was reserving the west half of the Sabine for Texas when it became a state.

It seems Texas' whole case is based on the theme that, from the date of the Louisiana Purchase, the United States established a firm policy of depriving Spain, and then Mexico, of Texas, so as to make it a part of the United States and give the new state half of the Sabine. While there might be some basis for this argument from comments of some statesmen, it was never the firm policy of the United States. As the Court will observe in reading the discussions between deOnis and Adams, in negotiating the Treaty of 1819, there was strong disagreement between them as to whether Texas formed any part of the Louisiana Purchase, and as to the exact location of the western boundary. (See: Marshall, "A History of the Western Boundary of the Louisiana Purchase", filed in evidence as Louisiana Exhibit M)

The Geological Survey Bulletin 1212, "Boundaries of the United States and the Several States," filed in evidence by Texas as Exhibit H., contained the following plat:

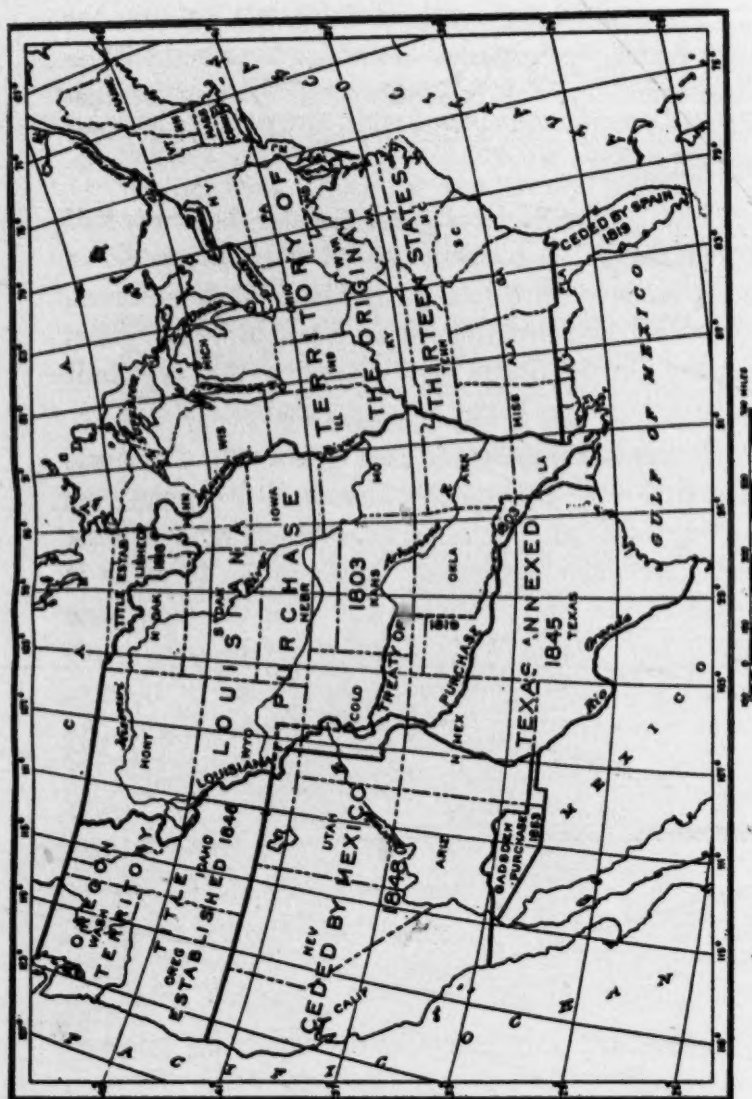


FIGURE 3.—Contiguous United States, showing accessions of territory from 1803 to 1853.

This plat shows territory acquired by the United States from 1803 to 1853; it shows that the original Louisiana Purchase extended from a line near the Atchafalaya River across Louisiana; and that the area involved in this suit was acquired by Louisiana in the Treaty of 1819.

In an interesting article published in the Southern History Association Journal, Volume V, September, 1901, No. 5, by Professor John R. Ficklen, entitled, "Was Texas Included In The Louisiana Purchase?", the writer, in the conclusion of that article, stated:

"In reviewing calmly the facts that have been given in the preceding pages it seems to the writer a correct conclusion to declare that the present State of Texas has no just claim to be regarded as a part of the territory purchased from France in 1803. As we have seen, that claim rests upon the fact that in the year 1685 the adventurous LaSalle, who three years before had taken possession in grandiloquent terms of the Valley of the Mississippi and of the coast as far as the River of Palms in Mexico, landed by accident on the coast of Texas and there planted a colony. This colony by the next year had dwindled from 185 to 45 persons and in the following year only about twenty of these were left. LaSalle had not proposed to settle on that coast, and it was his intention to remove his dwindling colony as soon as possible, to the banks of the Mississippi. Before this intention could be carried out, he was killed, and his settlement was destroyed by the Indians.

"As soon as the Spaniards learned of what they regarded as an invasion of their rights, they sent a strong force into Texas, and carried off all the members of LaSalle's colony that they could find among the Indians—an act for which they were never called to account by France. They then proceeded to plant missions and a presidio in Texas (1690). After three years these were abandoned; but twenty-three years later, when the French once more threatened occupation, the Spaniards took permanent possession of Texas and with missionaries and colonists they held it against the French for forty-six years—until, in fact, all contention was quieted by the transfer of Louisiana to Spain.

"Spain had also a claim of prior discovery, weak until reinforced by occupation; but she based her strongest claim on the exclusion of the French from the soil of Texas during a long period and upon the fact that between Adaes (Adais) and Natchitoches a boundary line was practically agreed upon. The French, it is true, had protested on several occasions against Spanish occupation, but to borrow a term from international law, this seem to the Spaniards like establishing 'a paper blockade' around Texas, and they very properly refused to recognize a claim which France never enforced. It is noteworthy that LaSalle's settlement had no real significance in the history of Texas.

"In the nomenclature of town and river, in the government and life of the people, no influence, with one slight exception, save that of Spain, can be detected until the American settlers came

crowding into the province during the nineteenth century. As to the maps, we have seen that they differ so much as to the limits of Louisiana that they neutralize one another. The curious phenomenon has been noted that the best Spanish map (Lopez's) gives (doubtfully) Texas to the French; while the best French maps (Vaugondy and D'Anville) give it to the Spaniards!

"Finally the treaty, it is to be remembered, by which the United States acquired Louisiana gave it 'with the extent it now has in the hands of Spain and which it had when France possessed it.' Now, as 'Louisiana in the hands of Spain' never embraced Texas under its government, it would certainly seem that by this clause our country was precluded from advancing a claim to the province. The two clauses should be regarded as reinforcing each other in support of the Spanish claim.

"The Floridas and Oregon, which at various times, were claimed by the United States as portions of the Louisiana Purchase, have been declared by the sober judgment of history to have formed no part thereof. A similar judgment, it may be predicted, will finally be pronounced in the celebrated case of the Louisiana Purchase vs. Texas."

This demonstrates that there is proof that the area of Louisiana encompassed in the neutral zone was not part of the Louisiana Purchase and the title to that area was only firmly settled by the Treaty of 1819. This is another reason why the western boundary of Louisiana was not established until the Treaty of 1819.

We are not talking about the United States transferring territory to Louisiana after it became a State; we are talking about the establishment of a boundary which was unsettled at the time Louisiana became a state and could not be fixed permanently in view of the agreement of 1806 between Spain and the United States. When the boundary was established by the Treaty of 1819 between the United States and Spain (the only two parties with authority to make such a settlement) that boundary then became the western boundary of Louisiana,¹² and no action subsequent to that time by the United States could deprive Louisiana of this boundary. The only serious question in this case is whether Texas acquired the west half of the Sabine by acquiescence and prescription, when both Louisiana and Texas had concurrent jurisdiction over the total Sabine?

Texas has not produced any creditable evidence from an official source of the United States that it was not the intention of the United States, when it negotiated the boundary settlement in 1819, to fix Louisiana's western boundary. Louisiana was not acquiring any property by "donation", "coalescence", or "osmosis", as Texas argues, but was having its boundary established. The official acts of the United States from that day forward justify this position.

The official plat filed by the Commission that

¹² This was recognized by Congress and the two statesmen most familiar with the boundary, Secretary of State Henry Clay and President John Quincy Adams. See pages 20-22 of Louisiana's Brief in Support of Exceptions to Report of the Special Master.

made the survey in 1840-41 shows the State of Louisiana on one side and the Republic of Texas on the other. It did *not* purport to show the west half of the Sabine between these two entities as the territory of the United States.

After the survey of 1840-1841, the United States resurveyed the townships from the 32nd degree of north latitude to the 33rd degree of north latitude, establishing the west boundary of Louisiana as coinciding with the treaty boundary of 1819. Actually, Louisiana lost territory by the resurvey in this area that was formerly thought to belong to it.¹³

The first resurvey was made on December 23, 1845, by George W. Morris, Deputy United States Surveyor, and the next resurvey was made by J. R. Barbour, Deputy United States Surveyor, in 1895. Both of these surveys show that Louisiana's boundary coincided with the treaty of boundary of 1819, as surveyed and staked.

T. G. Bradford's *Illustrated Atlas, Geographical, Statistical and Historical of the United States and the Adjacent Countries*, published in Philadelphia in 1838, entered, according to Act of Congress, in the year 1838 in the clerk's office of the clerk of court of Massachusetts describes the boundaries of Louisiana (page 147):

"STATE OF LOUISIANA

EXTENT. BOUNDARIES. The State of Lou-

¹³ Pp. 24-25 of Louisiana's Brief In Support of the Exceptions to the Report of the Special Master.

isiana comprises that part of the old Territory of Louisiana which lies south of 33° N. Lat., and the section of the Province of West Florida west of the Pearl River, and south of 31° N. Lat. The western bank of the Sabine from its mouth to the 32d parallel, and a straight line drawn thence due north to the 33d parallel of latitude, form its western boundary, the latter parallel is its northern limit to the Mississippi; that river is its eastern boundary to 31°, and Pearl River from thence to its mouth.”¹⁴

While Texas, in its brief, quotes arguments by attorneys of Louisiana that appeared in the Public Land Decision of 1910, (Item 1 in Texas' Exhibit B) nevertheless, the Commissioner determined:

“The West bank of the western channel of the river at this point will be recognized as the boundary between the State of Louisiana and Texas.”

The Commissioner then went on and said:

“The Supreme Court of the United States has sole jurisdiction to finally determine the question of disputed boundaries between States. (Virginia v. Tennessee, 148 U.S. 503) No decision that may be made herein would be binding upon the States. But it is the duty of the Department to determine whether the lands in question are part of the public domain and whether they are of the character of lands that pass to the State of Louisiana

¹⁴ See letter of November 8, 1972 from Walter W. Ristow, Chief, Reference Department, Geography and Map Division, The Library of Congress to Emmett Sole, to which is attached a copy of the 1838 map of Louisiana, showing Sabine Lake in Louisiana, all of which is part of Appendix A hereto.

under its grant of swamp and overflowed lands. For that purpose it must determine for itself what boundary should be recognized, and such determination must be made according to the elementary rules that control in the question of disputed boundaries.

"The true line in a navigable river between States of the Union which separates jurisdiction of one from the other is the middle of the main channel of the river. If there be more than one channel of a river, the deepest channel is the mid-channel for the purpose of territorial demarcation (*Iowa v. Illinois*, 147 U.S., 1) That is also the rule as between nations if there be no convention respecting it (*Handly v. Anthony*, 5 Wheat. 374; *U. S. v. Texas*, 162, U.S., 1)

"But that rule has no application in this case, for the reason that the boundary between the Republic of Texas and the United States was fixed by convention. Furthermore, the river was not the boundary, but the boundary between said Republic and the United States was the west bank of the river, and such boundary continued to be the east boundary of Texas until the act of July 5, 1848, when the United States consented that the State of Texas may extend its limits from the western bank of the river to the middle of the stream. *It can not be presumed, however, that the United States intended by such legislation to take from the State of Louisiana any part of its territory or to change in any respect the boundaries established by the act of its admission, even if it had authority to do so.* (*Louisiana v. Mississippi*, 202 U.S., 1, 40.)

"You will execute the instructions given in the letter of December 2, 1907." (Emphasis ours)

In a letter from the Assistant Commissioner of the General Land Office of the Department of the Interior to Mr. S. A. Mayo, dated March 31, 1932, filed as Texas' Exhibit B, Item 6, the Assistant Commissioner again affirmed the ruling in the 1910 case involving the boundary of Louisiana by saying:

"In the case of the State of Louisiana (39 L.D. 63), the facts with reference to the boundary line between Louisiana and Texas were set forth at some length and it was held (syllabus) that

'For the purpose of determining whether certain islands lying between the two channels of the Sabine River at a point known as the "Narrows" are part of the public domain and of the character of lands that pass to the State of Louisiana under its Swamp land grant, the west bank of the western channel of the river at this point will be recognized as the boundary between the States of Louisiana and Texas.'

"This would appear to fix the boundary line through Sabine Lake, no differentiation between the river and the lake having appeared in any of the treaties or acts of Congress, supra."

This clearly evidenced the position of the Department of the Interior that the boundary of Louisiana was on the west bank of the Sabine, including the west bank of the Sabine Lake even after the passage of the Act of 1848.

Louisiana filed in evidence a composite map furnished it by Texas dated sometime after 1896 (Lou-

isiana Exhibit F, Item 1) which affirmatively states thereon that in 1819 "the boundary between *Texas* and *Louisiana*" was fixed by the Treaty of 1819.

As late as 1960, former Attorney General of Texas Will Wilson recognized before this Court that the Treaty of 1819 "fixed the boundary between Texas and Louisiana." (Louisiana Exhibit H, Item 1 and page 53 of Louisiana's Brief in Support of the Exceptions to the Report of the Special Master.)

The only Act of the Federal Government on which Texas relies is the Act of 1848, permitting it to extend its boundary to the middle of the Sabine, which, we urge, only extended the jurisdiction of Texas to the middle of the Sabine, since Louisiana already owned to the west bank of the Sabine.

We urge that Louisiana's boundary was on the west bank of the Sabine, by virtue of the Treaty of 1819, when Texas was admitted into the Union in 1845. Louisiana's boundary is still on the west bank of the Sabine.

POINT II: ARGUMENT

Texas is attempting to deprive Louisiana of its land extending from the middle of the Sabine to its west bank. We have already discussed Texas' change in its understanding with Louisiana not to push the boundary controversy pending the Tideland litigation. Most of the acts relied upon by Texas took place *after* 1941, which may account for this change.

Neither Texas, in its briefs, or the Special Master

in his report, has answered Louisiana's argument that the Treaty of 1819, granting the inhabitants of both sides of the Sabine the "use" and "navigation" of its waters, vested concurrent jurisdiction in Louisiana and Texas over the waters of the Sabine.

This reserved treaty right was considered by the Republic of Texas in correspondence with the United States just prior to the date the Republic of Texas was admitted into the Union as a state. Only the United States has authority to deal with a foreign nation under the United States Constitution. It also controls navigation in navigable rivers even though the river is wholly located within a state and the title to the bed of the river is vested in the state. Even though Louisiana owned the bed of the Sabine to its west bank, it was proper for the Republic of Texas to deal with the United States in connection with the "use" and "navigation" of the waters of the Sabine.

The Republic of Texas sought to exercise some forms of jurisdiction by the right to "use" over the Sabine while acknowledging thereby that the ownership of the entire Sabine belonged and would continue to belong to the United States. Texas implicitly pledged never to claim any ownership rights based on prescription through "use".

On May 30, 1839, David G. Burnet, Acting Secretary of State of Texas, wrote to Richard G. Dunlap, Minister of the Republic of Texas to the United States, directing him to ask the United States Government for permission for Texas customs officials to examine

all ships entering the Pass of the Sabine. From *Annual Report of the American Historical Association for the Year 1907*. George P. Garrison, ed., *Diplomatic Correspondence of the Republic of Texas*, ([Wash., 1908], Part I, p. 400).

Dunlap reported to Texas President M. B. Lamar that the United States Secretary of State John Forsyth was unwilling to concede this right of search within its territorial waters. (Dunlap to Lamar, July 21, 1839, in Garrison, ed., *Diplomatic Correspondence of the Republic of Texas*, I, 411.)

Three years later—August 28, 1842—George W. Terrell, Acting Secretary of State of the Republic of Texas, instructed Isaac Van Zandt, Texas' Charge d'Affaires in Washington, to press the issue again with the United States Government. (Garrison, ed., *Diplomatic Correspondence of the Republic of Texas*, I, 602.) To halt "flagrant violations of [Texas'] revenue laws with perfect impunity," Texas was explicitly requesting United States trading vessels to be obliged to submit to Texas customs inspection in the Sabine Pass. Texas was implicitly recognizing that this inspection, which was normally a part of territorial jurisdiction, would, if graciously granted, not be so considered; that is to say, Texas was willing to recognize that no act of jurisdiction granted to her under the title of "use" would ever be a pretext for invoking prescription.

Texas insisted that customs inspection was necessary lest the port of Sabine become a free port of the world and lest commerce by keel boats a few feet off

shore make a mockery of Texas' commerce regulations. Use of a thing includes the means without which use would be useless, wrote Texas Secretary of State Ashbel Smith to A. J. Donelson, United States Charge d'Affaire at the Texas Capitol, February 10, 1845. [*Garrison, ed., Diplomatic Correspondence . . . II, 355-358.*] (See Appendix "A", hereto for copy of letter from Smith to Donelson.) Texas' revenue laws had to be safeguarded. "A limited jurisdiction for this purpose must be exercised by Texas over the adjacent waters." (*Ibid.*, p. 357). Donelson rejected the claim to inspection as a right but looked forward to an agreement which would protect Texas' rightful interest. (Donelson to Ebenezer Allen, Attorney General of Texas and Secretary of State ad interim, April 7, 1845, *Garrison, ed., Diplomatic Correspondence, II, 369-373.*)

It is obvious that the Republic of Texas recognized that some type of agreement was necessary to govern the "use" and "navigation" of the Sabine, since both nations had jurisdiction over the use and navigation of the Sabine.

The United States authorized Texas to extend its *jurisdiction* to the middle of the Sabine. This meant that where both Texas and Louisiana had concurrent jurisdiction over the "use" and "navigation" of the Sabine, with *Louisiana owning the bed and subsoil of the Sabine to the west bank*, the United States extended the jurisdiction of Texas to the middle of the Sabine so that both states would have the right to

regulate the "use" and "navigation" of the Sabine at least to the middle thereof. This took the place of a compact between Texas and Louisiana. Texas and Louisiana recently entered into a compact with the approval of Congress as to a portion of the Sabine known as the Toledo Bend Project.¹⁵

At page 36 of our brief in support of Louisiana's exceptions to the report of the Special Master, the case of *State of Washington v. State of Oregon*, 214 U.S. 205, 29 S.Ct. 631, 53 L.Ed. 969 (1909) is cited. In that case, this Court affirmed, on rehearing, its previous decision reported in 211 U.S. 127 (1908). The language of the decision, which is quoted on page 36 of our aforementioned brief, held that the grant of concurrent jurisdiction over the Columbia River, by Congress, did not determine the boundaries between the two states. By the same reasoning, the grant of *jurisdiction* to Texas to half the Sabine did not divest Louisiana of ownership of the bed and subsoil of the Sabine to the west bank.

The Court cited *Nielsen v. State of Oregon*, 212 U.S. 315, 29 S.Ct. 383, 53 L.Ed. 528, (1909), which pointed out that the Act of Congress of March 2, 1853 (c. 90, 10 Stat. at L. 172), organized the Territory of Washington and gave the Territories of Washington and Oregon "concurrent jurisdiction" over all offenses committed on the Columbia River which was the boundary between the two states. The act admitting Oregon as a state dated February 14, 1859 (c.

¹⁵ Louisiana Exhibit A, Item 23.

33, 11 Stat. at L. 383), gave concurrent criminal and civil jurisdiction of all cases on the Columbia River to Oregon. This is another instance where Congress, by granting concurrent civil and criminal jurisdiction to two adjoining states, did not fix ownership of the bed and subsoil thereto.

There are a number of other situations in which the courts have had to construe treaties, compacts and statutes between states and territories wherein "jurisdiction" was granted over all or part of water bodies without changing the boundary, but in our research we have failed to find any case discussing concurrent jurisdiction where the inhabitants of both states have equal rights in the "use" of the water. This is one more strong case why the United States should regulate the jurisdiction over the "use" and "navigation" of the waters without effecting Louisiana's boundary.

When this case is viewed in the light of the treaty provisions granting to the inhabitants of both sides of the Sabine the equal "use" and "navigation" of the waters, it is quite clear why there was no need for Louisiana to institute suit against Texas to have its west bank boundary recognized. This accounts in large measure for the maps relied on by Texas which have lines in the approximate middle of the Sabine.

Texas relies on numerous maps made for various purposes, largely *after 1941*, as constituting acquiescence by Louisiana to a midstream boundary. Judge Van Pelt, in his report, recognized that these maps

were not made for the specific purpose of establishing the boundary between Texas and Louisiana. Texas was thoroughly familiar with Louisiana's claim and was not misled in any way by any of these maps, statements of some of Louisiana officials, and other unofficial acts of Louisiana in its effort to establish a midstream boundary.

In our brief we pointed out that after the Special Master's report Texas, through James U. Cross, Executive Director of the Parks and Wildlife Department, publicly stated that the big difference created by the Special Master's report on the boundary:

"begins where the land ends.

The line forming the border leaves the mouth of the Sabine River about midway between Texas Point and Louisiana Point, which are the southernmost points of land in the two states, and runs southeasterly, roughly toward the 18-mile light.

The reason for this is the mouth of the old Sabine River traveled in that direction, thus establishing a southeasterly direction for the border extending into the Gulf.

The jetties turn and run in a more southerly direction at that point. Thus the base of the east jetty and a short piece of the jetty extending into the Gulf still lies within Louisiana.

But the remainder of the East jetty, including the safety pass, is in Texas.

The new border is not marked by any visible means.

Cross indicated that Texas game management officers will start patrolling the newly acquired area." ¹⁶

Here is another instance in which Texas is trying to use a line drawn on a map from the Gulf of Mexico north through the Sabine Pass, Sabine Lake and Sabine River, but disregarding the line on the same map as it extends into the Gulf. This is the type evidence that Louisiana respectfully urges should not be sufficient to deprive Louisiana of its valuable property rights consisting of the bed and subsoil of the west half of the Sabine.

POINT III: ARGUMENT

The Special Master stated (p. 31)

"The general rule is that when a navigable river constitutes the boundary between two States, the jurisdiction of each State extends to the middle of the main channel of the river. This is known as the 'thalweg' or main navigable channel doctrine. The doctrine is based upon equitable considerations and is intended to preserve to each State its equal right in the navigation of the stream *Iowa v. Illinois*, 147 U.S. 1, 7-8 (1893); *Georgia v. South Carolina*, 257 U.S. 516, 521 (1922); *Arkansas v. Tennessee*, 310 U.S. 563, 571 (1940). Where navigation of the river is not involved, there is no reason to apply the thalweg doctrine and 'in the absence of convention or controlling circumstances to the contrary, each takes to the

¹⁶ See: Brief of Louisiana in Support of the Exceptions to the Report of the Special Master, Appendix, Item 4.

middle of the stream.' " *Georgia v. S. Carolina*, supra.

Following this, the Special Master commented on the fact that both states concede that they have common rights of navigation on the Sabine by virtue of Section 12, Act of Congress, dated February 15, 1811, the Congressional Act admitting Louisiana as a state (April 8, 1812, 2 Stat. 701) and the 1819 Treaty between the United States and Spain (8 Stat. 252).

An analysis of *State of Georgia v. State of South Carolina*, 257 U.S. 516, 42 S.Ct. 173, 66 L.Ed. 347 (1922) reveals that this case has been cited only eight times. The final decree in this case (259 U.S. 572) reads:

"2nd. Where there are islands, the line is midway between the island bank and the South Carolina shore when the water is at ordinary stage; 3rd. That all islands formed by nature in the Chattooga River are reserved to Georgia as completely as are those in the Savannah and Tugaloo Rivers."

In denying the application of the Thalweg Doctrine, the Court cited the Beaufort Convention between Georgia and South Carolina from which the following is quoted:

"The navigation of the river Savannah at and from the bar and mouth (here follows a detailed description of the course of the river)—is hereby declared to be henceforth equally free to the citizens of both states, and exempt from all duties, tolls - - -"

It also quoted from a South Carolina resolution of 1852 to the effect that the Beaufort Convention fixed the boundary between the two states as "the thread or middle of the most northern branch or stream of the rivers Savannah and Tugaloo, where these rivers have more than one branch or stream, and the thread or middle of these rivers where there is but one branch or stream".

South Carolina had admitted in its answer that where there were no islands the line was the "middle thread of the stream where the rivers flow in one stream or volume." Later South Carolina sought to repudiate this and argued that the true boundary was the low-water mark on the southerly or Georgia bank of each river, and where there were islands, it was on the southerly bank of the most northerly stream or branch of the river, while conceding all islands in the Savannah and Tugaloo to Georgia (but not in the Chattooga).

This Court held that, as the Beaufort Convention fixed the *geographic* middle of the Savannah, Tugaloo and Chattooga Rivers (one continuous stream) as the boundary, the *thalweg* rule did not apply. This case should not be considered as a strong precedent for South Carolina practically "admitted itself out", as it sought to reverse itself in the light of its own pleading.

Of the eight instances—according to Shepard's Citations—in which that case has been cited, not one of them involved this particular point. Two of the

eight cases involved only procedural points.

The Special Master may have been technically correct when he relied on *State of Georgia v. State of South Carolina* in support of his statement at page 32:

"Since the right of navigation of the Sabine is not an issue here, having at all times been open to the citizens of each State, application of the thalweg doctrine is unnecessary."

The Special Master further said (p. 33):

"Since Congress had provided for *free navigation* on the Sabine as early as February 15, 1811 (Texas' Exhibit G. pp. 47-50), the only logical meaning to the words 'thence by a line to be drawn along the middle of said river,' found in the congressional act which defined Louisiana's western boundary (Louisiana's Exhibit A, pp. 66-68), would be a geographic middle." (Emphasis supplied)

In our brief in support of the exceptions to the report of the Special Master, we naturally countered his argument with the fact that our case is not like that case because, in that case, the Beaufort Convention set the boundary at the middle of the Savannah River, whereas, the Treaty of 1819 set the Texas-Louisiana boundary on the western bank of the Sabine water system.

It is submitted that a valid answer to the holding of the Special Master on the thalweg point also lies in an analysis of the case *State of Louisiana v. State of Mississippi*, *supra*. As we have pointed out in prior briefs, this case held that the boundary be-

tween Louisiana and Mississippi lay in the middle of the main channel from the Pearl River through Lake Borgne, Mississippi Sound and on into the Gulf of Mexico. This meant the "thalweg."

The fact of greatest significance is that the same constitution—that of Louisiana of 1812—was involved in *State of Louisiana v. State of Mississippi*, supra, as is involved in the case at bar. The Enabling Act of Congress which authorized the admission of Louisiana into the United States specified that the navigation of the water boundaries of Louisiana would be "common highways, and forever free, as well to the inhabitants of other states and the territories of the United States". At that time Mississippi was not a state, but constituted one of the territories of the United States. Obviously, this act of admission by the parent sovereign guaranteed to the citizens of Louisiana, and all other states and territories, free rights of navigation. This is exactly the same thing that the Beaufort Convention did as between South Carolina and Georgia. At the risk of repetition, the following is quoted verbatim from the Act for Admission of Louisiana as a State dated April 8, 1812:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said state shall be one, and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original states, in all respects whatever, by the name and title of the state of Louisiana; Provided, That it shall be

taken as a condition upon which the said state is incorporated in the Union, *that the river Mississippi, and the navigable rivers and waters leading into the same, and into the gulf of Mexico, shall be common highways, and for ever free, as well to the inhabitants of said state as to the inhabitants of other states and the territories of the United States, without any tax, duty, impost or toll therefor, imposed by the said state; and that the above condition, and also all the other conditions and terms contained in the third section of the act, the title whereof is herein before recited, shall be considered deemed and taken, fundamental conditions and terms, upon which the said state is incorporated in the Union.*"

The query is: Why was the Thalweg Doctrine followed in *State of Louisiana v. State of Mississippi*, supra, when there was no more "necessity for it" than there was in *State of Georgia v. State of South Carolina*, supra. Both the Convention and the Act, which apparently are of equal dignity, granted neighboring states and territories equal rights of navigation.

It is interesting to note how similar the language of the Beaufort Convention is to the language contained in the Act of Admission of Louisiana as a state. Unquestionably, when Mississippi was admitted into the union, as authorized by the Act of Congress of March 1, 1817, 3 Stat. Ch. 23, p. 348, she was entitled to all rights of navigation in the water boundaries between that state and Louisiana as they were "common highways, and forever free as well to the inhabitants of said state as to the inhabitants of other states and

the territories of the United States ***". At that time Mississippi was a territory.

Interestingly enough, the constitution of Mississippi does not adopt the rule of the Thalweg.

The Act of Admission of Mississippi into the union does not contain any provision for free navigation by neighboring states and territories, as does the act admitting Louisiana. This could hardly make any difference, as Mississippi's right to free navigation was recognized in the Act of Admission of Louisiana. The Act of Admission of Mississippi gives the south and eastern boundaries of Mississippi as follows:

"Thence westerwardly, including all the islands within six leagues of the shore, to the most eastern junction of Pearl River with Lake Borgne, thence up said river to the thirty first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence to the point of beginning."

As pointed out in our brief on page 49, in *State of Arkansas v. State of Mississippi*, 250 U.S. 39, 39 S.Ct. 422, 63 L.Ed. 832, (1919), this Court disregarded holdings by the Supreme Court of Mississippi expressing belief that the geographic middle of the river was the correct boundary, rather than the thalweg, or main navigable channel. As has just been pointed out, even the Constitution of Mississippi appears to fix the boundary in the geographic middle.

It is significant that this decision (*State of Louisiana v. State of Mississippi*) has been cited approximately 45 times according to Shepard Citations and it

has always been cited with approval. Of course, it was not always cited in support of the Thalweg Doctrine because there were other important points in the case such as the principle of acquiescence and prescription. However, the decisions can be accepted as one of the leading cases on the Thalweg Doctrine. Yet, to repeat, this was a case where free common navigation of the water boundaries between Louisiana and Mississippi was in existence by virtue of the Act of Admission of Louisiana dated April 8, 1812.

An examination and analysis of that case reveals that the Court was thoroughly aware of the contents of the Act of Congress of April 8, 1812 because the first paragraph is quoted.

The Act of Admission of Louisiana (adopted *after* the Louisiana Constitution of January 22, 1812), makes the Mississippi and the navigable rivers and waters leading into it and the Gulf "common highways and forever free" for Louisiana's people and those of other states and territories. So, the Mississippi Territory, adjoining Louisiana on the east, was the beneficiary as was the State of Mississippi when it was admitted into the Union in 1817.

The Treaty of 1819 between Spain and the United States gave the "use of the Waters and the navigation of the Sabine to the Sea" to both nations—the exact same privilege to Spain and its successors on the west as the Act of Admission gave to the Mississippi Territory on the east. The same Constitution of Louisiana of 1812 was involved.

State of Georgia v. State of South Carolina, held, as found by the Special Master, that, under the Beaufort Convention, both Georgia and South Carolina had common rights of navigation in the Savannah River (just as Spain and the United States had in the Sabine under the Treaty of 1819). So the *Thalweg doctrine* was held **INAPPLICABLE**. Louisiana and Mississippi had common rights of navigation in Pearl River, Lake Borgne and the other boundary waters between them under the Louisiana Act of Admission of April 8, 1812; yet, in that case the Supreme Court held that the *Thalweg Doctrine* **WAS** applicable. This would appear to throw the two cases in conflict. To repeat and reiterate: if the fact that the two bordering states or territories had common rights of free navigation in the navigable stream that constituted their boundary—thus obviating the necessity for applying the *Thalweg Doctrine*—in one case (*State of Georgia v. State of South Carolina*) why not in the other (*State of Louisiana v. State of Mississippi*)?

It can be strongly argued that in parent cases like *State of Iowa v. State of Illinois*, 147 U.S. 1, 13 S.Ct. 239, 37 L.Ed. 55 (1892), the Court was merely stating the basic historical *reason* for the *Thalweg Doctrine* and was not laying down as a *legal principle* the idea that there *must* be a *necessity* for protecting navigation on behalf of the two adjoining states for the doctrine to apply.

We have here an anomalous and abnormal situation. Louisiana's constitution simply says "middle of the river" when delineating the western and eastern

boundaries of the State. The word "middle" is not defined. Yet we have it defined as the "geographic" middle on the west by the Special Master (because of the existence of free common navigation) and defined as the "middle of the main navigable channel" (the thalweg) on the east (despite the existence of free common navigation).

Texas had contended that there was no well defined or habitually used main channel of navigation in Sabine Pass, Sabine Lake or Sabine River in 1812 or thereafter and, therefore, this is sufficient reason to deny Louisiana's thalweg claim. Quite to the contrary, Louisiana has, in fact, introduced evidence to show the most navigable channel through the Sabine, with this evidence being dated as early as 1838.¹⁷

House Executive Document No. 147, 47th Congress, 1st Session, is a letter from the Secretary of War transmitting a report of the Chief of Engineers of the result of the survey of the entrance to Sabine Pass, which letter was referred to the Committee on Commerce on March 29, 1882, and which makes several references to the depths in the Sabine and its navigability. See also House Document No. 1290, 61st Congress, 3rd Session.

If the holding in the *State of Georgia v. State of South Carolina* case, *supra*, is followed by this Court then, since Louisiana owns all the islands in the Sabine, it follows that "where there are islands the boundary line between Texas and Louisiana is midway between

¹⁷ See La. Ex. K, Items 2, 3, 6, 7, 8, 9, 10, 11 and 12, and Appendix "A", Item 4.

the island's bank and the [Texas] shore when the water is at ordinary stage." [South Carolina deleted and Texas added].

CONCLUSION

We respectfully urge Louisiana's boundary should be recognized as the west bank of the Sabine as established by the Treaty of 1819 and as surveyed and staked and the title to all islands in the Sabine be recognized as belonging to Louisiana.

Respectfully submitted,

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CERTIFICATE

I, WILLIAM J. GUSTE, JR., Attorney General of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of _____, 1972, I served copies of the foregoing brief by transmitting conformed copies of the same, by first class mail, postage prepaid, to the Special Master, the Office of the Governor and Office of the Attorney General, respectively, of the State of Texas, and upon the Solicitor General of the United States, in compliance with Rule 33.2(b) of the Rules of the Supreme Court of the United States, since the Report of Special Master has raised the question of the constitutionality of an Act of Congress of July 5, 1848 (9 U.S. Stat. 245).

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INDEX TO APPENDIX*

*Description**Item
Number*

1. Article entitled "Reverend Devil" by Ross Phares published in 1941, which is a biography of John A. Murrell, from which is taken a chapter entitled "The Free State of Sabine."
2. Sugar, Leon "Following the Spanish Trail Across the 'Neutral Territory' in Louisiana", Volume 10, La. Hist. Quart. pages 86-93, (Jan.-Oct., 1927).
3. Letter of Walter W. Ristow, Chief, Reference Department, Geography and Map Division, The Library of Congress, Washington, D. C., to Emmett Sole dated November 8, 1972, to which is attached copies of an 1838 map of Louisiana, and the text portion describing the boundaries, from Thomas G. Bradford's *An Illustrated Atlas . . . of the United States* (Boston, Weeks, Jordan and Co., 1838).
4. Letter of Ashbel Smith to A. J. Donelson dated February 10, 1845.
5. House Document No. 365, 25th Congress, 2d Session, being a letter from the Secretary of War transmitting a report respecting the removal of obstructions to the navigation of the Sabine River, which report is dated May 7, 1838, and to which is attached certain plats showing depths in Sabine Pass, and Lake.

* The documents forming this Appendix are not part of the official record in this case but is matter of which this Court may take judicial notice.

APPENDIX

Item No. 1

CHAPTER VI

THE FREE STATE OF SABINE

Back in Tennessee, Murrell found that the old home country was being settled rapidly. It made him nervous to see these changes; opportunities were not so plentiful as they once were.

But Murrell, in his travels, had found a strange new country where "speculations" were plentiful and law was unknown. At first the place had offered him no great inspiration. He merely dashed into it for excitement and adventure, and after filling his pockets passed on. Now, the sight of rapid developments in his home state gave him the urge to move on. He felt cramped and hemmed in here. He began to think of better and more isolated headquarters. His thoughts turned to the Free State of Sabine.

The Free State of Sabine was a freak nation that lay along the eastern side of the Sabine River on the western border of Spanish territory. It was a bastard state that owed no nation homage, and held the respect of none. It was ruled entirely by outlaws, and there was no law except the law of might. Because of its strategic [*sic*] location, it was one of the most talked of places on the continent, as well as the most feared. Practically all traffic in and out of the Southwest had to pass through this country. And because of the immensity of this traffic and the richness

of the cargoes, the outlaw realm became powerful and wealthy, and consequently audacious.

This country was not large, not more than fifty miles wide, with indefinite boundaries on the north and southeast, and no military fortification. A small army could have wiped it off the map. But in spite of the fact that it threatened the very existence of traffic between two important nations and held progress at a standstill along its frontiers, no nation molested it; and its barbarous practices continued until the very name of the place became a word of horror.

Only a strange history in a strange land could have given birth to such a geographical freak. And only a feverish, deep-seated international jealousy would have permitted the existence of such a state.

The history behind the Free State of Sabine dates back almost to Columbus' discovery of America. For it was not long after this event that the French and Spanish came into conflict over land in the western hemisphere.

In the year 1685 an unusual flare of jealousy broke out among the Spaniards. In that year LaSalle, through mistake, missed the mouth of the Mississippi River and landed on the southern coast of Texas. The Spaniards could not accept this extended westward cruise as an accident. They immediately renewed their efforts to colonize Texas. And the French took advantage of LaSalle's bad navigation and laid claim to the Texas territory. But neither nation made any

headway colonizing the territory. Texas was too far from their bases of supplies.

After an official flurry and a lot of talk about "what they would do," the Spaniards relaxed. LaSalle had been murdered; and his followers had starved to death or disappeared otherwise. They forgot about Texas.

Then in 1714 they flew into another fit of jealousy. For in that year a young French merchant by the name of Louis Juchereau de St. Denis appeared at the presidio of San Juan Bautista on the Rio Grande with a cargo of merchandise to peddle. Such audacity was unheard of! Spanish officials went into a hysterical trance over the affair. This brazen, intrusive Frenchman might find their mines; he might call himself an explorer; he might start France to talking about that old LaSalle claim. He was detained at the presidio until the officers became rational enough to decide what to do with him. Then his goods were confiscated and he was rushed off to prison in Mexico City.

And there one of the queerest turns of history took place. St. Denis won the confidence of the officials, headed an expedition of Spaniards organized to settle the eastern frontier, and on the way back, at San Juan Bautista, recovered his goods and as an added flourish, picked up the beautiful granddaughter of the commandant for his wife.

St. Denis led the Spaniards to within fifteen miles of Natchitoches, the French outpost. Here they

established the town of Los Adaes, which in time became the capital of the Texas province. It was a puzzling act, this Frenchman leading foreigners into territory claimed by his own country. But Louisiana at that time was a commercial colony, and St. Denis' orders were to establish trade. It was much easier to trade with Spaniards if they were close to the French storehouses. Commercially and socially the arrangement was satisfactory enough, but from a diplomatic standpoint there was no end to the trouble it brought.

Boundary disputes raged for years. In desperation, and then in boldness Spain would claim the whole of both Texas and Louisiana. But France too knew how to play this ancient diplomatic game. When her move came she would retaliate by claiming for herself all of Louisiana and Texas.

When the United States came into possession of Louisiana in 1803, nothing had been done about a western boundary except a lot of writing and swearing. The United States politely took up the boundary argument. But it soon became no more polite than international diplomacy forced it to be. When the diplomats failed, the armies were called in. The United States was not sufficiently patient to wait with the hope that perhaps another hundred years would in some natural way fix a boundary.

Spain let it be known that she was prepared to defend her territorial claim. The United States republic, now flushed with territory by the Louisiana

Purchase, with a characteristic youthful pride, and aggravated by growing pains, gave the impression that it was ready to take on all comers. And so in the fall of 1806, both nations playing a bold part, and not to be outdone by the other, sent their armies marching viciously toward the disputed territory.

The Spanish army drew up at the west bank of the Sabine River. The American troop camped on the other bank. Soldiers on both sides stood in readiness with loaded guns waiting for the command to fire. But the command never came.

The two opposite generals got together and temporarily settled the matter by agreeing that the territory between the Sabine and the Arroyo Hondo should be neutral ground. Their respective governments ratified the treaty. And in this manner both nations saved their faces without going to war.

But little did either nation realize the outcome of such an agreement. A strict provision of the treaty declared that neither nation should send any armed forces into the neutral zone; no police power of any nature was provided for.

It seemed that geography had gone mad. For here, in an already unruly region where two wild frontiers met, was established a sanctuary for all those who hated law and order. No flag waved over this "No Man's Land"; no law was binding. Soon the riff-raff of the earth came pouring in, outcasts of all countries, fugitives from justice, thieves, robbers, desperadoes of all varieties. It was an outlaw

Utopia. For once within the bounds of this neutral zone he was free of pursuit. No law could touch him here; he might laugh at all laws.

It was a desperate, reckless crew that flocked here for protection, and to live upon the commerce that passed through their state. They robbed and pillaged and murdered to their hearts' content, and preyed upon one another as wild beasts that know no law. They made capital of the jealous dispute between Spain and the United States, and dared anyone to molest them. Of great importance to the prosperity of the outlaws was the fact that the two main highways of the Southwest crossed the Neutral Ground.

What the Natchez Trace was to the Mississippi Valley, the San Antonio Trace* was to the Southwest. It was the road that St. Denis had established on his first trip to Mexico; and it immediately had become the most important highway of the Southwest. It ran from Natchitoches westward toward Mexico City directly across the Neutral Ground, a most unfortunate circumstance for travelers and traders.

The other road was Nolan's Trace, a branch of the San Antonio Trace that left the older highway just east of the Sabine and crossed the Red River a short distance above the present city of Alexandria. Nolan's Trace was the shortest route from the western plains to the eastern stock market, and during

* Often referred to as El Camino Real.

the first half of the nineteenth century thousands of head of horses and cattle were driven over this trail.

There was no route around the Neutral Ground, and it pleased the freebooters to think of the fact.

The longer Murrell thought about the Free State of Sabine the more appealing it became to him. There in the Neutral Ground, an outlaw empire might be established. A shrewd man might become king! The thought set his ambition on edge.

So the Reverend Murrell discarded his Bible and long coat. He bought an extra pistol instead. Then he headed toward the Sabine with fantastic dreams blazing in his head.

Between the San Antonio and Nolan's traces he established himself. His headquarters were a natural marvel. No bandit could have picked a better location. His hideaway was a huge cave near the foot of the highest hill in the region. For miles on all sides open forests of virgin pines spread out in a beautiful, though confusing monotony. Occasionally there was a ravine with its stream of clear water, lined in places with small hardwood trees. But for the most part the country was a meaningless expanse of twisting, pine-covered hills. It was a confusing country to the stranger trying to find his way about.

The cave was an exceedingly large one. It served not only as living quarters, but was sufficiently large to house supplies and stable a large number of horses. A clear rippling spring branch rushed by within a few yards of the entrance. It was a beautiful, iso-

lated, melancholy retreat where the wind forever moaned weirdly and mysteriously among the top of the tall pines.

Before long Murrell had a collection of men around him, bold, deadly ruffians who would rob or kill at the command. The cave became a treasure house. For it was the heyday of the traces. Out of the Southwest came packtrains of silver from the Mexican mines, long droves of cattle and horses from the Texas plains, and back toward the west traveled merchants from Natchitoches, New Orleans, and Europe with their packs of silks and jewels. Many adventurers and home-seekers from the East, lured by accounts of rich lands and opportunities in Texas, headed through the Free State with high hopes, and fortune in pocket.

Murrell knew how to handle these travelers. He had outposts along the traces at strategic points—at Natchitoches, at the inns, and at the river crossings. His scouts kept him informed upon all the important business along the traces. These aids were men of various professions, inn-keepers, stock raisers, muleteers, farmers, traders. Many, perhaps most of them, did not know the extent of the workings of the gang they served. They did their small part, received their rewards, asked no questions, and kept their mouths hushed. A few became involved, more or less innocently, with Murrell, and were then afraid to turn back. It seems that for a number of years Murrell was the ruling spirit in the Neutral Ground.

It was along Nolan's Trace that Murrell committed his greatest depredations. It seemed that a curse hung over this road and those who traveled it from the time it was blazed until it faded out of use. Drama, tragedy, and romance marked the old road all the days of its impetuous life.

Philip Nolan, the man who laid out the trail, was a handsome, adventurous, young Irishman, who resided at Natchez on the eastern edge of Spanish territory. His business was dealing in horses. The Spanish army needed horses, and the animals were scarce around Natchez. Nolan saw a business opportunity and made capital of it. For a number of years he rounded up horses from the Texas plains and sold them to the officials of the Spanish dominion. It was over this road that he ran hundreds of galloping wild ponies, and in the doing accumulated a modest fortune.

But the Spaniards became suspicious about the information this American was accumulating concerning the province of Texas. While herding horses in Texas he was shot by the Spaniards, who reported to his bride of a few weeks that he had merely deserted her and his country. And then, to add misery to misfortune, a certain Edward E. Hale wrote a little book which he called *The Man Without a Country*, and through an unfortunate coincident he named his leading man Philip Nolan. And due to the circumstances and erroneous reports (later clarified by a companion of Nolan who after twenty years in Mexican prisons escaped and gave the true story) about

Nolan, many believed that the American trail blazer was the young lieutenant in the Reverend Hale's book.*

Nolan's Trace, like its blazer, was destined through all its days, to a turbulent, eventful existence. Due to its remoteness it was always a dangerous road.

Before Murrell came to the Free State outlaws had from time to time stampeded droves of horses and cattle along the traces and carried them off to markets of their own selection. It had been rather easy in the matted undergrowth and canebreaks along the winding creeks. The outlaws usually knew the country better than did the drivers. And they knew how to hold their advantage. Occasionally the drivers offered resistance, but usually after a few shots they stampeded as easily as the cattle and wild horses. But Murrell had a better plan. He watched the long droves of stock go by on the way to market. Murrell had patience. These men would be back. "Why," he reasoned, "should he trouble himself to drive these stubborn wild beasts for days over wilderness roads and fight the dust and flies at their heels?" Why run any risk of complications at the market place? His prospective victims enjoyed the job too much themselves. It would grieve him much to deprive them of the pleasure! True, they would spend part of their earnings in the towns. But there was always plenty.

* Reverend Hale regretted this misleading circumstance; and to prove that it was all a coincidence and that he meant no injustice to the memory of Philip Nolan, he wrote another book about the real Philip Nolan and titled it Philip Nolan's Friends.

And if the correct time and place was chosen by a specialist, the task of collecting the stock money was a frivolous detail.

Murrell planned his work with the precision of an architect. He arranged his procedure to fit the circumstance; his knack for calculating was remarkable. If an attractive drove of cattle crossed the Sabine River on the way to market, some of his men were usually on hand to investigate the matter. It was a popular procedure for some member of the gang to "accidentally" fall into company with the cow drivers and find out their business—where they expected to sell their stock, what such cattle were expected to bring at the market at that time, when they would be coming back, by what route. It was all very casual; travelers on long journeys have to talk about something. Men who talked too freely usually never lived to warn others.

After the stagecoaches started running across this country, the outlaws attacked many of them and staged bold and merciless holdups. But Murrell never made a practice of this type of robbery. It was too difficult to do away with a stage coach and an entire crew. These coaches ran on a schedule, and the disappearance of one would have been rather conspicuous. Murrell was too shrewd to run such risks. Usually he found that it was not necessary to run risks in the Neutral Ground.

If prosperous looking gentlemen were passing through No Man's Land, scouts, as a rule, spotted

them. There were stops along the trace that the stages had to make. At any of these places some member of the gang might fall into conversation with a rich traveler, suggest a drink of water, or perhaps something stronger. Any scheme to get the traveler out of sight. Once this was accomplished, the rest was easy. He was killed, his possessions taken, and the robber disappeared into the forest before anyone could know that anything unusual had happened. If a traveler appeared to be a good prize, or likely to be hard to handle, a member of the gang might engage transportation over the route to see that plans were not frustrated. In some crowded inn they might be forced to sleep together. Any circumstance that necessitated privacy was arrangement enough.

On one occasion one of Murrell's scouts reported that a "rich prize" was in transit to Texas. He had stayed for awhile at the scout's inn and had made himself very impressive by telling of his wealth. A "companion" was immediately dispatched to accompany him. Shortly after dark the stagecoach drew up at a small inn that the passengers might refresh themselves and new horses might be hitched to the stage. When the impressive traveler entered the inn his "companion" and two other men, who appeared as if from nowhere, followed closely behind him. They unceremoniously rushed him into a side room. The door flew closed. A muffled scream was heard. When someone finally ventured into the room, no one was to be found. The back door was open, and outside all was quiet and apparently peaceful. When the alarm

had been spread and preparation for pursuit made, it was discovered that all the horses in the corral had been turned out, and not even the stage horses could be found. The next morning the supposedly rich man's body was found in the well back of the house.

The San Antonio Trace was much older, better known, and traveled more than Nolan's Trace. There were a few villages on it, and alongside it, or near, were farmhouses. It was for over a century the most important highway west of the Mississippi.

During the heyday of the Free State of Sabine the population along the trace reached the lowest ebb in many years. Several years before the signing of the neutral zone treaty the Spanish had abandoned their capital [*sic*] at Los Adaes. And when war had seemed likely between the United States and Spain, most of the remaining Spaniards immigrated further into Texas or Mexico. After the outlaws took charge, only a small part of the old population remained—a few stubborn Spaniards, unconcerned half breeds, half-wild French traders, and a sprinkling of Anglo-Saxons who had established homes and dared to stay there and live in spite of the fact that no government existed. Before long citizens and travelling merchants were pleading for police protection. They had been left to a cruel fate.

When conditions had become almost intolerable, the United States government took it upon itself to clean up this nest of outlaws and thugs. But the United States was quickly warned by Spain that it

was strictly against the provisions of the treaty of 1806 for any armed Americans to enter this territory, and that any such act would be construed as a hostile move toward Spain and an attempt to invade Spanish territory. The Americans had made a reputation for pushing over frontiers. And Spaniards were not inclined to take any unnecessary chances with the aggressive Americans. They were determined that they should come no closer to Spanish territory than the eastern boundary of the neutral zone. And so conditions became steadily worse in the Neutral Ground. It was perhaps the most dangerous strip of territory on the continent. Helpless people there continued to be robbed and murdered, and worse still, these marauders became so bold they made raids upon surrounding territory and then dashed back into their reserve. If the bandit could escape over the boundary of the Free State, he was safe from all punishment.

Further alarmed by this growing menace, the United States government proposed a joint campaign against the outlaws. But Spain did not choose to accept the offer. Apparently she was jealous of all moves the Americans might make, and she felt that this outlaw empire might serve as a buffer state against future aggressions.

In 1819 Spain recognized the Sabine River as her eastern boundary. And the Neutral Ground might technically have come to an end at that time. But for two years Spain refused to ratify the treaty in an effort to induce the United States not to recognize

her rebellious colonies. However, in 1821 Mexico won her independence from Spain, and the United States then had Mexico to deal with instead of Spain. Again it seemed that the old problem would be settled and the terrible Neutral Ground brought to an end, but the new Mexican republic, ambitious as a result of her accomplishments, refused to recognize the treaty made by the mother country.

The marauders continued their depredations while diplomats at the capital cities politely argued over the boundary question, and discussed lengthy plans, which resulted in nothing.

After 1821 the United States ventured to strengthen her claim to the Sabine River by sending Zachary Taylor into the disputed territory with orders to establish a fort and look after the interests of the United States there. In 1822 Taylor established [*sic*] Fort Jesup on the San Antonio Trace on the watershed between the Red and Sabine rivers, about twenty miles from the latter. The chief duties of the troops were to guard the border, and to impress Mexico with the strength of the United States. And though the country was not officially recognized as American soil, the presence of the army gave a rather definite impression that it was only a matter of time until the Free State of Sabine would become a part of the American commonwealth.*

Murrell did not care to become involved with

* This boundary problem was not officially settled until 1836 when Texas became an Anglo-Saxon republic.

soldiers. And for that reason he confined most of his plundering to the trace to the south. But there was one place along the San Antonio Trace that was too tempting for any adventurer of Murrell's caliber to miss. That was Shawneetown, located on the trace three miles west of Fort Jesup.

The United States government in the very early days of Fort Jesup passed a law preventing whiskey being sold within three miles of the flag post of the cantonment. Shawneetown sprang up at the three-mile limit. Anything the government prohibited at Fort Jesup, Shawneetown took pride in furnishing. Liquor, women, gambling, entertainment of all shades. There was open house all time.

Shawneetown was one place along the San Antonio Trace that was equipped to entertain the toughest traveler. It was the most wicked resort along the entire trace; the village boasted of the fact, and travelers advertised it well. It was a place where the mightiest made the rules and the weaker obeyed. It was the place where East and West met. To the Anglo-Saxon on his way west it was the jumping-off place; to the Latin on his way to the United States it was his introduction to the so-called civilization of the East. Many men spent their last night on earth there. Fortunes changed hands rapidly. It went on from day to day. Men shuffled dirty, limp cards over rough table tops and lost their fortunes in the doing, and then rode off over the same road that brought them, more desperate than ever.

The code of the frontier ruled. It was not a very definite thing, but strange acts were done in the name of it. Gunfire turned over-ambitious gamblers into unidentified corpses. The sound of cracking pistols, a shuffle of chairs, the pounding of galloping hoofs, another mess for the proprietor to clean up. No one seemed to bother greatly. New adventurers came, had their sprees, and yesterdays were forgotten or became heroic stories for stimulated minds to relate. It was a place where men got by on their toughness.

The place was about as far west as white women without family protection went. When the soldiers came, they flocked nearby. Men bargained for them, fought over them, cursed them and left them to their trade. No decent woman ventured near Shawneetown.

Many languages were spoken here, French, Spanish, English and half a dozen other European tongues; and then there was always the Shawnee Indians with their barbaric babble; they acted as servants, and watched the strange, mysterious drama that took place, and drew their own opinions about the pale-face civilization. It was a motley crew that visited Shawneetown: teamsters along the trace, soldiers from the fort, horse traders, horse rustlers, merchants, land prospectors, professional gamblers, outlaws, vagabonds, travelers extraordinary, adventurers in general. It was a place where the high and the low gathered, and dignity and vulgarity met with joined hands.

Shawneetown was too attractive a temptation for

any young blade with an adventurous nature to miss. Here Murrell met kindred spirits. He enjoyed the society there, and spent his easy money with the entertainers; but he always had his eyes and ears open. Here was an excellent place to gossip. Travelers brought tidings from all parts. If citizens or officials were getting suspicious it would surely be talked at this place sooner or later. Murrell was a scientist in his own way. He had a mission; and he seems never to have lost sight of it. He had his frolics and his spree, and at times he let his passion for counting other people's money get the best of his better judgment, but the man was never fickle in his purpose. From the resorts at Shawneetown the outlaw and his confederates could watch the traffic go by and calculate upon its possibilities. But to the people in the little frontier village Murrell was just another sucker, spending money recklessly. He was too shrewd to attempt any crimes near the fort. Nobody suspected Murrell because of his money. He had the bearing of a man of wealth. No one questioned these things at Shawneetown anyway.

"Business" around Fort Jesup was left to an associate gang. Not a great deal was known about the associate gangs of Murrell, or just what kind of an outlaw confederacy existed in No Man's Land, but there were several minor gangs over which Murrell exercised some control. What the system of organization was, just what allegiance the lesser chiefs held for the outlaw king, has never been determined. But

in their own mysterious way they had their codes and rules.

Perhaps the boldest of Murrell's lieutenants in the Free State was Hiram Midkiff, the leader of a band of horse thieves. The Free State had been ideal for the horse rustler. Horse stealing had been one of the most thriving businesses of the district. Horses were stolen in Texas and run into the Neutral Ground, from which place they might be taken with ease to any more eastern market that might suit the convenience of the thieves. It often happened that horses were stolen in Texas, sold in the Neutral Ground, re-stolen and carried back to Texas for re-sale. It was a racket that the professional horse stealers perfected to a system.

Hiram Midkiff lived a double life. In many ways he resembled Murrell. Midkiff posed as a horse trader. On the commissary porch at Fort Jesup he whittled sticks, chewed tobacco, and swapped yarns with the officers of the fort and citizens of the community, and carried on as a regular fellow. His extensive riding about the country became noticeable, but no one could pin anything definite on him. Such were the habits of the old time horse trader.

But for a long time he was under suspicion, and citizens in their frontier way referred to him as a dangerous man. But no one ventured to make an accusation; it was considered best to be polite to him. And through fear the horse rustler commanded a great deal of respect.

Midkiff played a bold part, and his success seems to have given him too much confidence. The beginning of the end came in a rather blunt manner. One day a slave belonging to Henry Stoker, a pioneer of the Fort Jesup community, came to his master and remarked in a distressed manner that Midkiff "said for me to bring him the horse, but I'm not going to do it." It was so sudden that Stoker was puzzled for a moment. But upon a minute's reflection he sensed the plot. He questioned the negro and found that the horse thief had planned for the negro to bring his master's best horse to him in the woods.

Stoker ordered the negro to lead the horse to the spot that Midkiff had designated. It was learned that the negro was to whistle as a signal to Midkiff. Stoker ordered his negro to carry out the instructions exactly as Midkiff had given them to him, but instructed him to get out of the way just as soon as he handed him the reins.

Early that night Stoker went to the spot where his horse was to be delivered and hid nearby behind a log. He had with him two sons and two neighbor boys, whom he also stationed nearby.

Later in the night the slave came with the horse and whistled his signal at the designated spot. Midkiff appeared immediately, his rifle across his arm, cocked. Stoker shouted at him to halt. No sooner said than Midkiff's rifle cracked. Stoker, already in a squatting position, fell over backwards, just as the bullet whizzed over his head. Stoker then aimed quick-

ly and fired. The bullet took effect in Midkiff's right breast.

Stoker and his boys set out for Fort Jesup with Midkiff, who struggled desperately every step of the way to escape. They noticed him making strained movements with his right arm. And if Stoker's bullet had not handicapped the arm, serious consequences might have resulted in the dark. For on his left shoulder was found a scabbard containing a long knife. When he had attempted to reach the knife with his left hand, the movement was so awkward that the weapon was discovered before he got his hand on it.

Midkiff was sullen. Long into the following day the citizens worked with the horse thief, questioning him. But he refused to talk.

Finally General Twiggs, an officer stationed at Fort Jesup, brought the questioning to a close. He threw a rope around Midkiff's neck and said: "We'll make him talk."

The weakening thief insisted that if they would promise to give him his freedom he would tell everything, and assured them that they would never be bothered with him again. He explained that after talking he would be forced to leave the country or his own men would kill him. Whether the men at Fort Jesup, seeing that he was dying, made the promise, or whether he volunteered, or in his delirium told, enough was learned for a posse to find his camp.

On a small creek, near the present town of Fisher, Louisiana, the posse located his camp that night. Mid-

kiff had excellent headquarters for an outlaw. To the east were the great open forests of virgin pines; and to the west, extending to the Sabine River, were ridges of beech and oak with their thick undergrowth. It was an unsettled, broken country of hills and winding creeks and bottoms. And nearer the Sabine River was a wilderness of swamps and canebreaks, a refuge for any fleeing bandit.

Shortly after dark the posse surrounded his camp. All night they waited silently in the undergrowth near the house. Early next morning one of the men, known as Tiger Bill, came out of the house to get firewood. He saw the men, wheeled and dashed madly toward the house. But a bullet dropped him before he reached the door. The bullet took effect at the point where his suspenders crossed. His back was broken. He fell to the ground face down, wiggling like a snake, yet struggling to make it to the house. And it was Midkiff's own rifle that had fired.

Four or five other men were captured. When the posse returned to Fort Jesup Midkiff was dead. Whether the capture included all of the Midkiff band or not was not known. But it definitely broke up horse stealing around the fort.

Murrell personally did not dabble much with horse stealing in the Free State. He was beginning to design bigger things.

Ideal as the location was for the outlaw, it was not sufficient to hold Murrell for a great length of time. He had enough foresight to realize that sooner

or later international difficulties would be cleared, and the outlaw empire would be rubbed out. Though an excellent place for the freebooter, it was, after all, a rather small place. Murrell was always scouting for something better, something bigger.

In the Free State of Sabine Murrell heard much talk of the marvelous opportunities of the Spanish Territory to the west, a land described as rich, and sure to become the most prosperous part of the continent. It was still unsettled and only partly civilized, but no one could calculate the great wealth that lay hidden there. Fabulous fortunes would be amassed there as if by magic!

Now that soldiers had marched into his Happy Hunting Ground, and his men were being shot down, he decided to look about for better territory. So he crossed the Sabine and set out for the Spanish Territory to see what there was to those fantastic tales he had been hearing.

Item No. 2

**FOLLOWING THE SPANISH TRAIL ACROSS
THE "NEUTRAL TERRITORY" IN LOUISIANA**

By LEON SUGAR of Lake Charles, La.

The route across the American continent trod by the Citizenry of Spain wound and wended and twisted in irregular lines and turned at rambling angles, but from sun to sun unfailingly it went. The route is now overgrown with weeds and briars, with farms and villages, with cities and with sovereign states, but, for all that, we can follow it by the foot prints still trailing on—here some sojourner tarried for a rest, then tarried longer, and then founded a home; there a stream, a hill, a valley, to which still cling the romantic names that befell them; and thus, link by link, we follow from ocean to ocean.

The imprint of Spanish occupancy is not deeply marked in the Calcasieu locality. In other parts of Louisiana and other localities, to the north, to the east, and to the west, reminders are numerous and prominent. "The Calcasieu country" wrote Judge Xavier Martin, in 1827, "is a barren waste." The Spaniards seemed to have no greater appreciation; they claimed sovereignty and they passed back and forth across it, possibly because it was convenient, but otherwise they paid it small attention.

The western boundary of the Province of Louisiana and of the State of Louisiana was for a long time involved in much obscurity. When France ceded Louisiana to Spain (1762) and when Spain restored

Louisiana to France (1803) and when France sold Louisiana to the United States little was known or cared about the geography of the country they were peddling. The ignorance of the participating high dignitaries was glossed over with language, sonorous, but loose and far from, even approximate, precision. This ignorance, or carelessness was the cause of great trouble and led to many bloody battles.

A strip of country on the western edge of Louisiana, long in dispute between the United States and Spain, was known as the "neutral territory." As a matter of fact it was far from neutral. There were many contentions between settlers of different allegiance. This, however, more particularly applies to the country further north. The land records for this vicinity show very few names that bespeak Spanish nativity. The records make mention of settlers who were here in early days but names like Thompson, Smith, Perkins, King, Ryan, etc., are not suggestive of Spanish ancestry.¹

After the treaty of 1819 between the United States and Spain, the United States recognized and respected the land grants made by Spain, but did so only after the claimant produced absolute proof. With few exceptions, the early cessions of Calcasieu lands made by the United States were to actual settlers.

The act of congress of March 3, 1823, provided "that all that tract of country situated between the Rio Hondo and Sabine river, within the

¹ American State Papers, Vol. IV, p. 146.

State of Louisiana, and previously to the treaty of the 22nd of February, 1819, between the United States and Spain, called the neutral territory, be and the same is hereby attached to the district south of Red river; and the register and receiver of the land office in said district are required to receive and record all written evidences of claim to land in said tract of country, derived from, and issued by, the Spanish Government of Texas, prior to the 20th day of December, 1803, according to the regulations, as to the granting of lands, the laws and ordinances of said government, and to receive and record all evidences of claim, founded on occupation and habitation, and cultivation."

An attempt to ascertain, or define, the boundaries of the so-called neutral territory is found in the testimony taken before the register and receiver of the Natchitoches land office in 1824.²

Testimony of Samuel Davenport. "The neutral territory comprehends all the tract country lying east of the Sabine and west of the River Culeashue, Bayou Kisachey, the branch of Red river, called Old River, from the Kisachey up to the mouth of Bayou Don Manuel, southwest of Bayou Don Manuel, Lake Terre Noir and Aroyo Hondo, and south of Red river, to the northwestern boundary of the State of Louisiana."³

Testimony of Jose M. Mora. "I have no other knowledge of the neutral territory, as to its boundaries, but from the Rio Hondo to the Sabine river."

Testimony of Gregorio Mora. "In the years 1794

² *Ibid.* 89.

³ *Ibid.* 90.

and 1795 I collected the tithes of all the residents who lived or who had stocks west of the River Culeashue, of the Bayou Kisachey, of the Bayou Don Manuel and Rio Hondo, and south of Red river, which were at that time within the jurisdiction of Nacogdoches and on the line of the Providence of Louisiana."

Orthography and geography do not seem to have given any worry to our pioneers. When not opposed by superior force they went as they wished; and when they spelled a word they went according to the law of least resistance. When one of them trimmed his quill pen self-respecting letters that objected to orthographic mesalliance had to find safety in rapid flight.

A number of parties appeared and submitted written documents in support of their land claims. These documents are quaint and interesting, but only a glimpse at them can be given here. It appears that the land grants under Spanish authority needed to be followed up by placing the grantee in actual physical possession.

The following copy of a "process verbal of possession" is almost (except for change in names and description of land) word for word, like all. And, like all, it shows a lack of fixity in boundaries, but characteristically, verbosity is sought to make up for lack of precision.*

"On this 29th day of December, 1795, in compliance with the foregoing decree, I, Jose Cayetano de Zepeda, *sindico procurador del comun Pueblo de*

* *Ibid.* 111.

Nuestra Senora del Pibar de Nacogdoches, went with the witnesses of my assistance, Don Jose de la Vega and Vincento del Rio, to the place called Bayou of the Adaise, where the petitioner claims, and has built his house, in order to give to the said D. Pedro Dolet, who is now living on the premises, possession according to the decree; wherefore, being at the designated place on the Bayou of the Adaise, and having inquired whether any of the neighbors would be injured by this grant, and having well ascertained that there was no impediment whatever, and that none of the boundaries of the adjacent proprietors intersected or touched those designated by Pedro Dolet in his foregoing petition, for which reason no injury can result to the nearest neighbors by giving Pedro Dolet possession of the land he claims in his petition, with all the extent and the boundaries therein mentioned; I have visited those boundaries, and the land they surround, with the aforesaid witnesses of my assistance, and the said Pedro Dolet, and, taking the latter by the right hand, I went with him a certain number of paces from north to south, and afterwards from east to west; and then, having let his hand go, he went as he pleased on the said land of Bayou of the Adaise, pulled up grass, made holes in the ground, planted stakes, cut bushes, threw dust into the air and on the ground, and performed several other things and capers, as evidence of the possession which I had given him in the name of his Majesty, whom God preserve, of the said land, with the extent and boundaries which he has demanded, and in proof of the property which he now holds in it as sole master by virtue of this act of possession, and, also, as a

symbol of the right of property which he forever holds on said land, of one league on each course of the compass, in the manner, place, and with the boundaries expressed in his foregoing petition, with all uses and privileges thereunto belonging; and, afterwards, I have designated the aforesaid tract of land by the name of San Pedro de las Adaise, so that it may forever go by that name; and, in order that said Pedro Dolet may be forever quieted in the peaceable enjoyment of his said land agreeably to law, and, that the evidence of his right may appear, I have signed these presents, with the witnesses of my assistance, at San Pedro de las Adaise, the day, month, and year aforesaid.

“JOSE CAYETANO DE ZEPEDA

“Jose Luis de la Vega

“Vincente Del Rio.”

It is left for the reader to imagine what other possible capers were left not performed.

The treaty of 1819⁵ and the congressional act of 1823 locate the Aroyo Hondo as in Louisiana and east of Sabine River. Quite likely the reader in Imperial Calcasieu would have as much difficulty in finding the Rio Hondo as in finding the Culeashue. On some of the older maps our lovely Calcasieu river is many times noted as Bayou Quelqueshue and sometimes as Calcasheu—never Quelquechose, as some think was the original name. This country was roamed over and at times occupied by Indians and not always by the same tribe, and there is authority, apparently well founded,

⁵ Treaty with Spain, Feb. 22, 1819.

for the statement that "Calcasieu" is derived from a certain Indian word meaning "Eagle."

As late as 1831 in an act concerning elections to be held in the Parish of St. Landry, it is recited "That hereafter the votes to be received in the additional precinct election, shall be taken at the house of Rees Perkins on the River Calcasieu, in lieu of Stephen Henderson's." * Some comparatively short time after the year 1800 there was a settler on Calcasieu river named John Henderson. His home was some eight or ten miles further up the river than the settlement of Rees Perkins.

The name of Rees Perkins, as a land claimant, appears more than one time in the reports. The house referred to in the act of 1831 was probably on the "Tract of land lying within the late neutral territory, situated on the right bank of the west branch of the Queleshue river, at a pine bluff about three miles from the mouth of said branch * * *" ⁷ ⁸ There are lines on the old maps that, to the mind of the writer, indicate that there was a ferry across Calcasieu river at a point near what is even unto this day known as Perkins' ferry; and that the Old Spanish Trail, from east to west and from west to east passed over Calcasieu river. It is quite probable that the existence of a ferry across Calcasieu river and the existence of a road easily followed led to the change of voting precinct.

In 1824 ⁹ the state of Louisiana granted to Hy-

* Act (La.) No. 3 of 1831.

⁷ U. S. Township plat—Survey approved Mar. 3, 1832.

⁸ Rio Hondo Claim No. 263.

⁹ Act (La.) of Feb. 28, 1824.

polite Guidry the exclusive privilege of establishing and keeping a ferry over the River Mermentau (this name was sometimes in those days spelled Mermenton) at the place where the said river intersects with the Nez Pique. This act was amended in 1826¹⁰ and this time the name was spelled Mementao. Ignorance of, or indifference towards the Calcasieu country is noticeable.

Calcasieu parish, formerly a part of St. Landry parish, was created in 1840.¹¹ Its eastern boundary is given as the River Mermentou. In the following year the privilege of keeping a ferry about two miles below the mouth of the Nez Pique was granted to James Andrew, Sr., and he was required "to keep and maintain in perfectly good order a ferry-boat or flat sufficient at all proper times to transport and ferry across the said River Mermentau all such wagons, horses, cattle, persons and property as may present themselves to be ferried across said river, and such ferry-boat or flat shall at all times be provided with a good railing on each side thereof, lengthwise at least four feet high." In a paper like this it is not quite proper to discuss the possible consequences of a wagon, either horse-drawn or cattle-drawn, presenting itself for transportation across the river.

A considerable number of people were established along the Mermentau river; very few west of there; and this may account for the seeming neglect of the state of affairs in what had been the "neutral terri-

¹⁰ Act (La.) of Feb. 3, 1826.

¹¹ Act (La.) 172 of 1840.

tory." Certainly no great wealth existed about here, for in the year 1841, Act 96 (La.) of 1841, it was provided that there should be two assessors in the Parish of Calcasieu, each of whom was to receive the salary of \$160 a year—one-half to be paid by the State and one-half to be paid by the parish.

Large oaks from little acorns (sometimes) grow. The reader will find on the map of Louisiana, up near the city of Natchitoches, a small black line noted as "Rio Hondo." In the testimony taken at Natchitoches in 1824¹² there are a number of references to the Rio Hondo. One of the witnesses places it about six miles west of the town of Natchitoches; another witness testifies that the land of a certain claimant lies "Within the late neutral territory, situated about a quarter of a mile from the Aroyo Hondo, on the road leading from the town of Natchitoches to Gaines' Ferry on the Sabine river, bounded on the west by the Aroya Hondo * * * *"

The most interesting testimony pertains to the land claim of "Edward Murphy." The testimony submitted by Edward Murphy, was in writing and as follows:

"Sen. Lieutenant Governor: Edward Murphy, of the post of Natchitoches, part of the province of Louisiana, presents himself before you, and says, that on the margin of a creek named Aroya Hondo, which separates the two provinces on the side of the province of Texas and on the margin between the royal road and another which passes by the Bayou St. John, there is a cove which

¹² Am. St. Papers, Vol. IV, p. 89.

I find so advantageous for collecting my cattle, I beg your honor would please to grant me possession of those lands, from which I shall reap great advantage having no place to collect my cattle; and, moreover, to grant me on this paper, there being none stamped: humbly ask of your honor that it may please you to give me possession of said land.

"Nacogdoches, October 17, 1791.

"MORFIT."

"Nocogdoches, [*sic*] October 17, 1791.

"In consequence of the petition, and that the land solicited is in the province of Texas, and vacant, I do grant it in due and best form, and that it may so appear, I sign this at Nacogdoches, October 18, 1791.

"ANTONIO GIL Y BARVO."

There are further numerous references to roads, to ferries, and to Spanish villages, in the country about Natchitoches, but no mention is found of Spanish villages in the Calcasieu territory, nor is there found any mention of highways and roads except the "Old Spanish Trace."

One, George Fogleman, "filed his notice claiming, by virtue of settlement and occupancy prior to February 22, 1819¹⁸ a tract of land, lying within the late neutral territory, situated on the west side of the Quelqueshue river on the Spanish Trace, about two miles above Charles' lake."

James Answorth, Ja., "filed his notice claiming by virtue of settlement and occupancy, a tract of land

¹⁸ American State Papers, Vol. IV, 138.

lying within the late neutral territory, situated on the west side of the Quelqueshue river, and on the west side of Show Pique Bayou, about 15 miles above the entrance of said bayou into the Quelqueshue river, at the crossing of said bayou which is about two miles south of the Spanish Trace."

Henry Moss "filed his notice claiming, by virtue of inhabitation, occupation and cultivation, a tract of land lying within the late neutral territory, and situated west of the Bayou Quelquesheu, on the waters of the Bayou d'Inde¹⁴ about two miles below and south of the Old Spanish Trace to the Sabine."

James Barnett "filed his notice claiming, by virtue of occupation, inhabitation and cultivation, a tract of land situated on the River Sabine at the Old Spanish Crossing, having a cabin on each side of the road."

There is further testimony to the effect that George Orr and Abel Terrall settled on this tract of land in the year 1818, and that it was "under good fence."

Thus ends the Calcasieu section of the "Old Spanish Trace." If the reader would follow along further he must cross the Sabine and find his guide in the land that once was known as the Spanish Province of Texas.

¹⁴ A common error: Should be Bayou Dinde—Turkey Bayou, 112 La. Rep. 218.

Item No. 3

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REFERENCE DEPARTMENT
GEOGRAPHY AND MAP DIVISION

November 8, 1972

Dear Mr. Sole:

In response to your telephone request of November 7, enclosed are complimentary xerox copies of the 1838 map of Louisiana, and the text portion describing the boundaries, from Thomas G. Bradford's *An Illustrated Atlas . . . of the United States* (Boston, Weeks, Jordan and Co., 1838).

Sincerely,

WALTER W. RISTOW
Chief

Enclosures

Mr. Emmitt Sole
P.O. Box 2900
Lake Charles, Louisiana 70601

EXTENT. BOUNDARIES. The State of Louisiana comprises that part of the old Territory of Louisiana which lies south of 33° N. Lat., and the section of the Province of West Florida west of the Pearl River, and south of 31° N. Lat. The western bank of the Sabine from its mouth to the 32d parallel, and a straight line drawn thence due north to the 33d parallel of latitude, form its western boundary, the latter parallel is its northern limit to the Mississippi; that river is its eastern boundary to 31° , and Pearl River from thence to its mouth. The strip north of the Iberville and the lakes, and between the Mississippi and the Pearl River, was added to the State soon after it was admitted into the Union. Within the limits thus described, Louisiana, extending from 29° to 33° N. Lat., and from $88^{\circ} 40'$ to $94^{\circ} 25'$ W. Lon., with a broad front of about 300 miles toward the sea, and a length of 260 miles from north to south, has an area of about 48,500 square miles; in the central part its breadth suddenly contracts to about 100 miles, but expands again in the north to 180 miles.

Item No. 4

SMITH TO DONELSON

DEPARTMENT OF STATE

*Washington on the Brazos.**February 10, 1845*

The Undersigned, Secretary of State of the Republic of Texas, has the honor to acknowledged [*sic*] the receipt of the note of the Hon. A. J. Donelson Chargé d' Affaires of the United States of America, bearing date the 2d Decr. 1844. together with the accompanying documents, in relation to a complaint made against the Collector of the Customs at Sabine in Texas, inasmuch as this officer required the payment of tonnage duties from certain American vessels resorting to the port of Sabine for commerce.* The right of every nation to make those interior regulations respecting commerce and navigation which it shall find most convenient to itself and to reserve to itself the liberty of admitting at its pleasure other nations to a participation of the advantages of its commerce, is a doctrine which has received the solemn and repeated sanction of the American Government, and will not, it is presumed, be controverted by the Hon. Mr. Donelson. On this clear principle the Government of Texas may of right establish the conditions on which they will ad-

* Opposite the beginning of this sentence in the margin are written the words, "Treaty between France and the United States of 1778, preamble."

mit other nations to come to their shores and receive the products of their soil or carry on commerce with their inhabitants; and they may require as one of the conditions of vessels trading with their port of Sabine the payment of dues or tonnage duties.

The town of Sabine in Texas is a commercial *port*; the adjacent country along Sabine Bay is washed by navigable waters; and the whole is subject to all the uses and incidents appertaining to a coast bordered by navigable waters. The port in question cannot be used except as a *port*, a *maritime depot*, for ordinary commercial purposes, neither can it by any fiction be regarded in any other light. If Sabine be not used as a *port* it cannot be used for commercial purposes at all; and the Gov't of Texas, as already intimated, may require as one of the conditions on which they will allow foreign vessels to trade with this port, the payment of tonnage duties; and if the payment of these duties be refused may bring to all vessels so refusing and compel payment. Relatively to this point, the undersigned begs to cite Mr. Jefferson who in 1792, then Secretary of State under General Washington declared in a communication on a matter similar to the one now under discussion that, "the right to use a thing comprehends a right to the means necessary to its use and without which it would be useless." And this doctrine has been since explicitly asserted by all the American text writers on International Law and solemnly affirmed and acted on by the American Government. If moreover the use of such means be refused on a plea of "jurisdiction" or the use so shackled by unnecessary regula-

tions as to render it unavailable by Texas, it then becomes an injury of which Texas may demand redress.

If the Government of Texas do not possess the right to collect tonnage dues and establish the other customary regulations of commerce for the port of Sabine, then have we at Sabine the most absolutely free port in the world, and there exists no authority anywhere to regulate or supervise the commerce that may be carried on thereafter. The undersigned does not suppose that the Hon. Mr. Donelson on the plea of "jurisdiction" would claim for his Government the right to establish a custodial use at the Sabine to regulate the commerce of the port, thus making the soil of Texas appurtenant to the water which washes its shores. The authority to regulate the commerce of the port in question must exist somewhere. The undersigned believes it is vested in the Nation owning the *terra firma*. Custom Houses are established on *land* and not on the *water* although their operation extends over the water.

If the right contended for by Texas exist at all, it is and must of necessity be exercised as a *perfect* right, otherwise it would be utterly nugatory. It would be idle to establish regulations for the commerce carried on upon its coast, if vessels in sight and even within short gun shot of the shore may openly set at naught or evade those regulations. And a limited jurisdiction for this purpose must be exercised by Texas over the adjacent waters.

So bold an evasion and flagrant a violation of the

revenue laws of Texas as has been attempted by the averment that the commerce between the shore and foreign bottoms has been carried on by means of flat boats or keel boats, will not surely be justified by the Hon Mr. Donelson. To prevent like audacious frauds, England and the United States claim and exercise for this special purpose a jurisdiction of twelve miles from their coasts respectively, within which distance they will not allow such fraudulent trans-shipments to be made.

By the terms of the Treaty of 1819, made between Spain and the United States, renewed in 1828, between Mexico and the U. States and finally established in 1838 between Texas and the United States, as the basis for running the boundary line, without any change of language so far as relates to the boundary and the waters of Sabine Bay; it is declared that the "use of the waters and the navigation" of the Bay are common to the inhabitants of both countries. This stipulation is declaratory of the right of Texas to the use of the waters in question, and is as clear and essential a portion of the Treaty as that which establishes the boundary line along the Western bank of these waters.

The undersigned has entered into a brief argument above to show on sound principles of public law and from the necessity of the case, that a *barren* use was not intended—a bare permission to sail in and out of Sabine Pass—but a beneficial use for all things which may be lawfully done on shore. If foreign vessels

resort to the port of Sabine to receive the products of Texas, the Nation owning the land and this nation alone, can impose tonnage duties and if necessary can go upon the water to enforce the collection of them by virtue of their right of use solemnly recognised in the Treaty in question. It would be violative of the best established of all rules of interpretation so to interpret the "*jurisdiction*" as to exclude the *use*; both rights repose on the same basis and are not incompatible; effect must therefore be given to both. No incompatibility or conflict can arise, inasmuch as the United States cannot claim to establish custom houses at the port of Sabine nor collect duties upon Texian [*sic*] soil on the products shipped or foreign merchandize imported there; To do these acts appertains of right exclusively to Texas on principles of public law and by the provision of the Treaty of Boundary.

The Undersigned cannot therefore admit the opinion expressed by the Hon. Mr. Donelson that "the authority to collect these duties cannot be recognized by the United States without a surrender of their jurisdiction of the waters of Sabine pass, Lake and river"; on the contrary he conceives that the Government of Texas have a perfect right to collect these duties and to the "use and navigation" of the waters in question for this purpose, and their collection does not conflict with the just claims of the United States nor afford that Government any good cause of complaint. He cannot believe that the Government of the United States propose so to stretch the interpretation to be given to their "*jurisdiction*" as to sustain their citizens in

violating those laws which the people of Texas may legitimately establish, as a condition of commerce with them.

The undersigned embraces this opportunity to present to the Hon. Mr. Donelson assurances of the high consideration with which he has the honor to be.

Most Respectfully

His Very Obedient Servant

(signed)

ASHBEL SMITH

Hon. A. J. DONELSON

*Chargé d'Affaires of the United States of America
etc. etc. etc.*

Item No. 5

25TH CONGRESS
2d Session.

[House Doc. No. 365.]

HO. OF REPS.
War Dept

OBSTRUCTIONS IN SABINE RIVER.

LETTER
FROM
THE SECRETARY OF WAR

TRANSMITTING

*A Report respecting the Removal of Obstructions to the
Navigation of the Sabine River.*

MAY 7, 1838.

Read, and laid upon the table.

DEPARTMENT OF WAR, May 5, 1838.

SIR: I have the honor to transmit, herewith, a report of the Commanding General of the army, which is accompanied by a copy of that of Major Belknap, "with respect to the removal of the obstructions to the navigation of the Sabine river," called for by a resolution of the House of Representatives of the 1st instant.

Very respectfully, your most obedient servant,

S. COOPER,
*Acting Secretary of War.*HON. JAMES K. POLK,
*Speaker of the House of Representatives.*HEADQUARTERS OF THE ARMY,
Washington, May 4, 1838.

SIR: In conformity with a resolution of the House of Representatives of the 1st instant, I herewith transmit a copy of the report of Major Belknap, of the 3d regiment of infantry, with respect to the removal of the obstructions to the navigation of the Sabine river, together with the accompanying papers and map, marked 1, 2, 3, and 4.

Very respectfully, sir, your obedient servant,

ALEX. MACOMB,
Major General, commanding in chief.

To the SECRETARY OF WAR.

PROPERTY OF
UNITED STATES GOVERNMENT
US-CE-S

CAMP ON THE SABINE LAKE,

Near the mouth of the Sabine river, (La.), March 24, 1838.

SIR: I have the honor to enclose, herewith, a sketch of the Sabine river, from Camp Sabine to the sea, together with a statement of the acting assistant quartermaster, showing the expense incurred in rendering it navigable for steamboats, and the copy of a letter from the master of the steamboat Velocipede, on making his first trip.

The chart of the lake and pass you will find to be somewhat different from the one furnished me from the Engineer department. This, however, is correct. It was made by Lieutenant J. H. Eaton, of the 2d infantry, after a most careful and minute examination.

I have the honor to be, sir, your obedient servant,

W. G. BELKNAP,
Major United States Army.

To Maj. Gen. A. MACOMB,
Commanding in chief U. S. A., Washington city.

No. 2.

SABINE PASS, March 23, 1838.

DEAR SIR: From your report of the navigation of the Sabine river, I have been induced to make the trial, with the steamboat Velocipede of 143 tons burden, (carpenter's measure,) 133 $\frac{3}{4}$ feet in length, 60 foot beam, with guards of 14 feet, drawing five feet water; and I am honored to inform you that I have succeeded in ascending and descending the river from the town of Sabine, a distance of about 300 miles, without the slightest injury to my boat.

Your success has been beyond the expectations of the oldest inhabitant on the river; and your labor has enhanced the value of all lands adjacent to the river at least two hundred per cent.

The raft, formerly considered impossible to be removed, I found no difficulty in ascending or descending.

The price of freight from *Natchitoches* to *Camp Sabine*, has herewith cost about five or six cents per pound; and by the *Sabine river*, from *New Orleans* to *Camp Sabine*, the freight will cost two cents per pound.

Yours, respectfully,

ISAAC WRIGHT.
Captain steamer *Velocipede*

Major BELKNAP.

No. 3

ASSISTANT QUARTERMASTER'S OFFICE,
Camp on Lake Sabine, (La.), March 24, 1838.

SIR: I have the honor to state to you, in compliance with your request that the expenses of the quartermaster's department, incurred by the clearing out and rendering navigable for steamboats, the Sabine river, were as follows, viz:

1st. For extra pay to the troops	\$ 893.42
2d. For articles expended, purchased by myself....	36.65
3d. For articles expended, purchased by assistant quartermaster, Lieutenant E. B. Alexander, rough estimate	369.93
Total	<u>\$1,200.00</u>

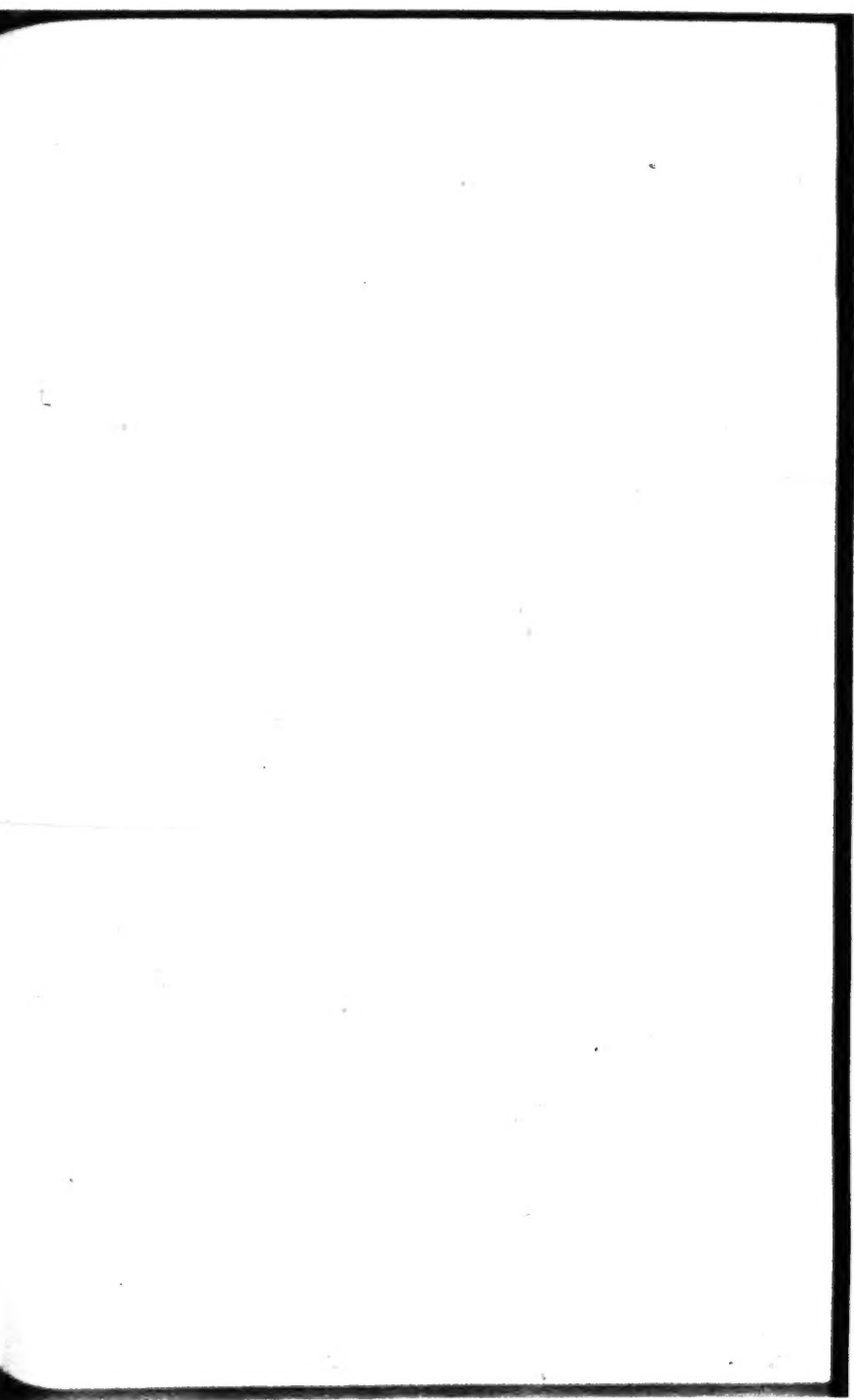
In the estimate of articles purchased by Lieutenant Alexander, I have neither overrated the value.

I am, sir, very respectfully, your obedient servant,

A. G. BLANCHARD,

1st Lieut. 3d Infantry, Acting Assistant Quartermaster.

Major W. G. BELKNAP,
Commanding expedition.



(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TEXAS *v.* LOUISIANA

ON BILL OF COMPLAINT

No. 36, Orig. Argued December 11, 1972—

Decided March 20, 1973

The Special Master's Report, to the extent that it recommends that the relevant boundary between Texas and Louisiana be the geographic middle of Sabine Pass, Lake, and River (collectively Sabine) and not the west bank or the middle of the main channel and that all islands in the east half of the Sabine when Louisiana was admitted as a State in 1812, or thereafter formed, should be awarded to Louisiana, is adopted; decision on the Report with respect to islands in the west half of the Sabine existing in 1812 or thereafter formed, is deferred pending further proceedings, in which the United States is invited to participate, and which the Special Master is to conduct. Pp. 2-12.

WHITE, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, MARSHALL, BLACKMUN, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting opinion.

The Special Master contemplates further proceedings to determine what islands were in the Sabine in 1812 and what prescriptive claims Texas may have to such islands. Louisiana's exceptions maintain that its boundary is not the geographic middle but the west bank of the Sabine, or alternatively, the main channel of the stream as it existed in 1812 west of the most westerly islands. Louisiana also claims all islands in the Sabine, whether existing in 1812 or thereafter formed. The exception filed by Texas asserts its right to all islands in the west half of the river but proposes that the question of ownership be deferred pending the outcome of the proposed additional proceedings with respect to islands that may have existed as of 1812.

Oral argument was heard on the exceptions. We now approve and adopt the report of the Special Master except his conclusions with respect to ownership of islands in the western half of the Sabine.

I

In an Enabling Act approved February 20, 1811, 2 Stat. 641, Congress authorized the inhabitants of a portion of the Louisiana Territory ceded under the Treaty between the United States and France on April 30, 1803, 8 Stat. 200, to seek statehood. The Sabine boundary for what was to become the State of Louisiana was described as "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of the said river, including all islands to the thirty-second degree of latitude" 2 Stat. 641. The 1812 Louisiana Constitution described the State's western boundary in substantially the same manner,¹ and the Act of Admis-

¹ The preamble to the 1812 Louisiana Constitution described the boundary as along the middle of the Sabine, "including all its islands." (Emphasis added.)

sion of April 8, 1812, 2 Stat. 701, employed language identical to that of the Enabling Act.

Preceding this period, and for some time thereafter, the western boundary of the United States was in doubt. Negotiations between the United States and Spain from 1803 until 1819 culminated in the Treaty of Amity, Settlement and Limits, 1819, 8 Stat. 252. Under this treaty, the boundary "between the two countries" was in relevant part established along the west bank of the Sabine, 8 Stat. 254; the United States relinquished all of Texas west of that boundary in exchange for Florida and the Spanish claim to the Oregon Territory; and it was provided that all islands in the Sabine belonged to the United States.

The United States renewed its efforts to acquire Texas, and when Mexico declared its independence from Spain in 1821, the United States began negotiating anew for the purchase of Texas. In the Treaty of Limits, 1828, 8 Stat. 372, the United States and Mexico recognized the boundary "between the two countries," *id.*, at 374, on the west bank of the Sabine as established in the 1819 treaty with Spain.² Texas declared its independence from Mexico in 1836, 1 Laws, Republic of Texas, 3-7, was recognized as an independent nation by the United States in 1837, Cong. Globe, 24th Cong., 2d Sess., 83, 270, and in 1838 the Sabine boundary agreed upon with Spain in 1819, and with Mexico in 1828, was adopted by the United States and Texas, 8 Stat. 511.³ The Sabine boundary remained unchanged when Texas was admitted as a State in 1845, 9 Stat. 108.

² Neither the 1819 Treaty nor the 1828 Treaty mentions Louisiana or its western boundary.

³ Texas' relevant boundary along the Sabine thus began "on the gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river, to the 32d degree of latitude" 8 Stat. 374.

In 1848 the legislatures of Texas and Louisiana passed competing resolutions, each requesting consent of Congress to establish its jurisdiction over the Sabine between the middle and the western bank.⁴ Congress passed an Act in 1848 giving its consent to Texas to extend its

⁴ The Louisiana Resolution, passed on March 16, 1848, and presented to Congress, provided in pertinent part:

"Whereas the constitution and the laws of the State of Louisiana, nor those of any other State or territory, extend over the waters of the Sabine river from the middle of said stream to the western bank thereof; and that it is of importance to the citizens living contiguous thereto, and to the people in general, that the jurisdiction of some State should be extended over said territory, in order that crimes and offenses committed thereupon should be redressed in a speedy and convenient manner:

"Therefore be it resolved by the Senate, and House of Representatives of the State of Louisiana in General Assembly convened, 1st. That the constitution and the jurisdiction of the State of Louisiana shall be extended over part of the United States, embraced in the following limits (whenever the consent of the Congress of the United States can be procured thereto.) viz:

"Between the middle of the Sabine river and the western bank thereof, to begin at the mouth of said river where it empties into the Gulf of Mexico, and thence to continue along the said western bank to the place where it intersects the thirty-second degree of north latitude, it being the boundary line between the said State of Louisiana and the States of—

"2d. Be it further resolved, etc., That our Senators be instructed, and our Representatives in Congress requested, to procure the passage of a law on the part of the United States, consenting to the extension of the constitution, and the jurisdiction of the laws of the State of Louisiana, over the territory in said river." S. Misc. Doc. No. 135, 30th Cong., 1st Sess. (Emphasis in original.)

The Resolution adopted by Texas on March 18, 1848, stated in relevant part:

"Resolution of the Legislature of Texas, in favor of the passage of an act, extending the jurisdiction of that State over the Sabine pass, the Sabine Lake, and the Sabine river, April 17, 1848.

"Joint Resolution instructing our Senators and requesting our Representatives in Congress to use their efforts to have a law passed

eastern boundary from the west bank of the Sabine to the middle, 9 Stat. 245, the Act stating:

"... [T]his Congress consents that the legislature of the State of Texas may extend her eastern boundary so as to include within her limits *one-half* of Sabine Pass, *one-half* of Sabine Lake, also *one-half* of Sabine River, from its mouth as far north as the thirty-second degree of north latitude." (Emphasis added.)

II

We agree with the Special Master that the western boundary of Louisiana is the geographical middle of the Sabine River, not its western bank or the middle of its main channel. Congress had the authority to admit Louisiana to the Union and to establish the boundaries of that State. U. S. Const. Art. IV, § 3; *United States v. Louisiana*, 363 U. S. 1, 30, 60-62, 67 (1960); *Washington v. Oregon*, 211 U. S. 127, 134-135 (1908). Hence, our task is to ascertain congressional will when it admitted Louisiana into the Union on April 8, 1812, and established her relevant western boundary as "beginning at the mouth of the River Sabine; thence by a line to be drawn along the middle of said river, including all islands to the thirty-second degree of latitude" 2 Stat. 702. The statute in this respect was identical with the Enabling Act of the prior year and differed hardly at all from the Preamble to the Louisiana Consti-

to extend the jurisdiction of Texas over one half of Sabine pass, lake, and river.

"SEC. 1. *Be it resolved by the Legislature of the State of Texas, That our Senators be instructed, and our Representatives in Congress be requested, to use their efforts to have a law passed by Congress, extending the jurisdiction of Texas over one half of the waters of Sabine lake, Sabine pass, and Sabine river, up to the 32° of north latitude.*" S. Misc. Doc. No. 123, 30th Cong., 1st Sess. (Emphasis in original.)

tution of January 22, 1812. The Louisiana Legislature resolved in 1848 that the State's jurisdiction should be "extended" to the western half of the river, reciting that neither it nor any other State had authority over that portion of the Sabine. See n. 4, *supra*. Texas made a similar request, see n. 4, *supra*, Congress acceding to the latter and consenting that Texas could "extend her eastern boundary so as to include within her limits one-half of Sabine Pass, one-half of the Sabine Lake, also one-half of Sabine River, from its mouth . . . [to] the thirty-second degree of north latitude." 9 Stat. 245. On the floor of the Senate, Mr. Butler, speaking for the Judiciary Committee, stated that the boundaries of the United States extended to the western shore of the Sabine, but that the boundary of the State of Louisiana extended only to the middle, the result being that "the half of the river and lake, to the western shore, belonged to the United States and was not included in the State of Louisiana" Cong. Globe, 30th Cong., 1st Sess., 882. Hence the bill, which gave "the half of the river beyond the boundary of the State of Louisiana to the State of Texas" *Ibid*. The bill passed, both Senators from Louisiana expressing "their acquiescence in the arrangement." *Ibid*.⁵

⁵ The full report of the action by the Senate, Cong. Globe, 30th Cong., 1st Sess., 882, is as follows:

"Mr. Butler, from the Committee on the Judiciary, reported an act giving the consent of the Government of the United States to the State of Texas to extend the eastern boundary so as to include within her limits one-half of the Sabine Pass, Sabine Lake, and the Sabine River as far north as the 32° of north latitude.

"Mr. B. asked for the immediate consideration of the bill, and briefly explained its character. The boundary of the United States, it was known, embraced the Sabine River and lake to its western shore. The boundary of the State of Louisiana extended to the middle of the Sabine; so that the half of the river and lake, to the western shore, belonged to the United States, and was not included in the State of Louisiana; therefore, the boundary of the State and

There is not a whisper in these statutes and instruments that the western boundary of Louisiana was on the west bank of the Sabine. Clearly the boundary was along the "middle" of the Sabine, not on the west bank. Louisiana argues, without substance we think, that the boundary was extended to the west bank by the Treaties of 1819 and 1828 with Spain and Mexico respectively, when the United States established and confirmed its own western boundary on the west bank of the Sabine. As the Special Master correctly noted, however, the United States was acting in its sovereign capacity throughout these events, and there is no indication that the United States was in any way representing Louisiana or intending to relocate the State's western border. Nor was there reason to do so. On the contrary, admission of States beyond the Sabine was some day contemplated, and it was more consistent with the policy of the United States to grant only the east half of the river to Louisiana and reserve the west half for a future State or States. See *United States v. Holt State Bank*, 270 U. S. 49, 55 (1926); *Shively v. Bowlby*, 152 U. S. 1, 26-28, 57-58 (1894).

The Special Master was also correct in ruling that the United States intended the geographic middle of the river, not the main channel, or thalweg, to be the western boundary of the State. The argument that the middle of the main channel was intended rests on the line of cases in this Court beginning with *Iowa v. Illinois*, 147

that of the United States, was not identical. The bill before the Senate gives the half of the river beyond the boundary of the State of Louisiana to the State of Texas, for the purpose of enabling the latter to extend her criminal jurisdiction to the Louisiana boundary. There could be no objection to the bill, and he hoped it would now be passed.

"Mr. Johnson, of La., and Mr. Downs in behalf of the State of Louisiana, expressed their acquiescence in the arrangement.

"The bill was then read a third time and passed." (Emphasis added.)

U. S. 1 (1893), which hold that in normal circumstances it should be assumed Congress intends the word "middle" to mean "middle of the main channel" in order that each State would have equal access to the main navigable channel.* The doctrine was borrowed from international law and has often been adhered to in this Court, although it is plain that within the United States two States bordering on a navigable river would have equal access to it for the purposes of navigation whether the common state boundary was in the geographic middle or along the thalweg. *Id.*, 7-8, 10; *New Jersey v. Delaware*, 291 U. S. 361, 380-385 (1934).

In *Iowa v. Illinois*, *supra*, however, the Court recognized that the issue was the intent of Congress, *id.*, at 11, and that it was merely announcing a rule of construction with respect to statutes and other boundary instruments. Thus it was acknowledged that the rule might be "changed by statute or usage of so great a length of time as to have acquired the force of law." *Id.*, at 10.

When Congress sufficiently indicates that it intended a different boundary in a navigable river, the thalweg

*That the "middle" of a river was to be construed as the thalweg in establishing the boundary between the States newly admitted to the Union was not authoritative doctrine prior to 1892 when *Iowa v. Illinois*, 147 U. S. 1, was decided and certainly not when Louisiana was admitted to the Union in 1812. The opinion in *Iowa v. Illinois*, *supra*, referred to five treaties on international law in support of its holding but noted the sharp conflict on the thalweg rule between the Illinois and Iowa courts. In *Dunlieth & Dubuque Bridge Co. v. County of Dubuque*, 55 Iowa 558, 8 N. W. 443 (1881), though the phrase in question was "middle of the main channel," certainly a phrase that would lend itself to a thalweg construction, the court instead ruled that the phrase meant the middle of the river bed, while in *Buttenth v. St. Louis Bridge Co.*, 123 Ill. 535, 17 N. E. 439 (1888), the court construed the phrase "middle of the Mississippi River" as being under the thalweg doctrine. After reviewing both cases, this Court chose the latter rule of construction.

rule will not apply.⁷ In *Washington v. Oregon*, 211 U. S. 127 (1908), the usual rule of the thalweg was recognized, but the Court said that "there is no fixed rule making that the boundary between States bordering on a river." *Id.*, at 134. The Act admitting Oregon was construed by the Court as placing the northern boundary of the State in the northern channel of the Columbia River and as intending for it to remain there even though that channel ceased to be the main navigable channel in the Columbia.

It was therefore imperative for the Special Master to look to congressional intent; and if it was sufficiently clear that Congress intended the Louisiana boundary to be the geographic middle of the Sabine rather than the thalweg, it was his duty to establish the border along the former line. His conclusion was surely consistent with the controlling instruments—"along the middle of the . . . river." It is also apparent that the parties to the Act of Admission, the United States and Louisiana, both evidenced their understanding of the 1811 Enabling Act, the 1812 Constitution of Louisiana and the 1812 Act of Admission, when the Legislature of Louisiana and the Congress of the United States expressly recited in 1848 that the western boundary of Louisiana included only the east half of the Sabine, not the west half. Whatever may be the normal significance of a later congressional indication of the meaning of an earlier statute, see, e. g., *Glidden Co. v. Zdanok*, 370 U. S. 530, 541 (1962); *Great Northern R. Co. v. United States*, 315 U. S. 262, 273, 277 (1942); *Brewster v. Gage*, 280 U. S. 327, 337 (1930); *Tiger v. Western Investment Co.*, 221 U. S. 286, 309 (1911),

⁷ A sufficiently expressed intent of Congress also overrides the usually applicable "equal footing" rule, *United States v. Louisiana*, 363 U. S. 1, 76-77 (1960).

here the question concerns the 1812 boundary between the United States and Louisiana, and in light of Art. IV, § 3, cl. 2, of the Constitution empowering Congress "to dispose of and make all needful Rules and Regulations respecting Territory or other property belonging to the United States," we think the Act of 1848 and the events connected with its passage had special significance as a construction by the United States and Louisiana of the earlier act admitting Louisiana to the Union. Cf. *Washington v. Oregon*, 211 U. S., at 135. At least, the indications are clear enough to us that we shall not apply the rule of the *thalweg* in this case.

The Special Master also concluded that even if he was in error in rejecting Louisiana's claim with respect to the original location of her western boundary, Texas must still prevail by reason of prescription and acquiescence. Because we are satisfied with our conclusion, already reached, with respect to the boundary location, we need not pass upon this aspect of the Special Master's Report, although we note that the facts relied upon by him are consistent with and support the other ground for his conclusion as to Louisiana's Sabine boundary.

III

With respect to islands in the Sabine it is conceded that Louisiana owns all islands in the eastern half of the river whether existing in 1812 or thereafter formed. As to islands in the west half, the Special Master concluded that by virtue of the 1812 Act of Admission Louisiana owns all islands that then existed in that portion of the river, but rejected her claims to islands thereafter formed in the western half. All later-formed islands in that half of the river, he concluded, belonged to the State of Texas.

We shall withhold judgment with respect to the ownership of islands in the western half of the Sabine River. Further proceedings with respect to these islands are

contemplated in any event, and it is our view that the United States should be requested to present any claims it may have to any of the islands in the western half of the Sabine south of 32 degrees north latitude and, if it so desires, to present evidence and argument with respect to the ownership of such islands. The Special Master should then determine whether his Report in this respect should be modified and complete the proceedings with respect to the ownership of the Sabine islands. Our reasons for so directing will be briefly stated.

It is the unquestioned rule that States entering the Union acquire title to the lands under navigable streams and other navigable waters within their borders. *Scott v. Lattig*, 227 U. S. 229, 242-243 (1913); *County of St. Clair v. Lovington*, 90 U. S. (23 Wall.) 46, 68 (1875); *Pollard's Lessee v. Hagan*, 44 U. S. (3 How.) 212, 228-230 (1845). But the rule does not reach islands or other fast lands located within such waters. Title to islands remains in the United States, unless expressly granted along with the stream bed or otherwise. This was the express holding of *Scott v. Lattig*, *supra*.

In that case, a dispute arose over the ownership of an island located east of the thalweg of the Snake River, which was the western boundary of the State of Idaho. It appeared that after Idaho came into the Union, and thereby acquired title to the river bed on its side of the thalweg, the United States patented riparian lands opposite the island, and the patentees claimed the island under the laws of Idaho as against a settler seeking to homestead the property under the laws of the United States. The homesteader prevailed in this Court because title to the island remained in the United States:

"But the island, which we have seen was in existence when Idaho became a State, was not part of the bed of the stream or land under the water, and therefore its ownership did not pass to the State

or come within the disposing influence of its laws. On the contrary, although surrounded by the waters of the river and widely separated from the shore, it was fast dry land, and therefore remained the property of the United States and subject to disposal under its laws, as did the island which was in controversy in *Mission Rock Co. v. United States*, 109 Fed. Rep. 763, 769-770, and *United States v. Mission Rock Co.*, 189 U. S. 391." 227 U. S., at 244.

In the case before us, it is probably correct that once the eastern boundary of Texas was extended to the middle of the river in 1848 that State became entitled to any islands in the west half which formed after the date of that extension. But unless the 1848 Act conveyed to Texas the islands located in the western half of the river at that time, title to those islands remained in the United States, if the United States had not previously conveyed all or part of them to Louisiana. The 1848 Act, however, does not mention islands in the Sabine, and it would therefore appear, if *Lattig* is to be followed, that the United States has an interest in any proceedings to determine the ownership of islands in the west half of the Sabine and should be a party to, or at least have the opportunity to participate in, such proceedings. Texas claims any such islands existing prior to 1848 by prescription and acquiescence, but, plainly, a State may not acquire property from the United States in this manner. *United States v. California*, 332 U. S. 19, 39-40 (1947).

We shall accordingly await the result of further proceedings before the Special Master with respect to the ownership of islands in the western portion of the Sabine. In all other respects the exceptions of the parties are overruled and the report of the Special Master is confirmed.

So ordered.

SUPREME COURT OF THE UNITED STATES

No. 36, Orig.

State of Texas, Plaintiff,

v.

State of Louisiana.

On Bill of Complaint.

[March 20, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Louisiana was admitted into the Union in 1812. 2 Stat. 701. The constitution of Louisiana of 1812 described her western boundary as "beginning at the mouth of the river Sabine, thence by a line to be drawn along the middle of said river, including all its islands, to the thirty-second degree of latitude." That was the description¹ that was recited in the 1812 Act in which Congress approved the constitution of Louisiana. 2 Stat. 701, 702-703. There remained a controversy between this Nation and Spain over this western boundary and the Treaty of 1819 settled the question by the only authority that could establish a boundary with a foreign government. *Rhode Island v. Massachusetts*, 12 Peters 657, 725.

That treaty provided that the boundary should start "at the mouth of the river Sabine in the sea, continuing north along the western bank of that river, to the 32d degree of latitude." 8 Stat. 252, 254, 256. When Texas was admitted to the Union in 1845, 9 Stat. 106, that same boundary was used to describe her eastern line. 8 Stat. 372, 374. The Treaty of 1828 recognized that as the boundary line between Louisiana and Texas for it was the boundary between the United States and Mexico,

¹ It was also in the Enabling Act giving Louisiana authority to form a constitution and state government and gain admission to the Union. 2 Stat. 641.

of which Texas was a part. 8 Stat. 372. Texas did not come into the Union until 1845. The Treaty of 1819 read in context means that Louisiana's western border, coinciding with that of the United States, was the western bank of the Sabine.

The 1819 Treaty does not mention Louisiana. But Louisiana along that segment of our western boundary was a buffer between this Nation and Spain. It is therefore dubious that the United States was bargaining for that narrow strip between the "middle" of the Sabine and the west bank of the Sabine as a detached, isolated piece of our public lands. Rather it seems well-nigh conclusive that in 1819 this Nation was bargaining with Spain for a border that in part at least of its reach would be the western border of Louisiana.

Louisiana claims that much and alternately only the "middle" of the Sabine, which according to the thalweg doctrine, when describing boundaries on navigable waters, means the middle of the channel, which is not necessarily the geographical "middle." The thalweg doctrine had that meaning both when Louisiana was admitted to the Union² and since that time.³

Why then does Louisiana lose? Why is her boundary restricted?

The Court relies on the Act of Congress of July 5, 1848, 9 Stat. 245, which gave Texas permission to extend her eastern boundary "so as to include within her limits one half of Sabine Pass, one half of Sabine Lake, [and] one half of Sabine River."

Washington v. Oregon, 211 U. S. 127 (1908), makes clear that the boundary originally established when Louisiana was admitted to the Union "is not within the

² The earlier authorities are discussed at length in *Iowa v. Illinois*, 417 U. S. 1, 7-10 (1892).

³ Thompson on Real Property, § 3075 (1962 ed.); American Law of Property, v. 3, § 12.27, at n. 16.

power of the National Government to change . . . without [Louisiana's] consent" *Id.*, at 131.

Given that legislative restraint Congress had no power to take the west bank from Louisiana or alternately it must have used "one-half" in a general, rather than a mathematical, sense, thereby granting to Texas only those areas lying west of the thalweg.

The Sabine River, Sabine Lake, and Sabine Pass are one continuous body of navigable water. Heretofore when in controversies between States the "middle" of a navigable stream has been described as the boundary, the middle of the channel is intended. *Iowa v. Illinois*, 147 U. S. 1, 7-8; *Arkansas v. Tennessee*, 246 U. S. 158, 173; *Minnesota v. Wisconsin*, 252 U. S. 273; *Wisconsin v. Michigan*, 295 U. S. 455.

Mississippi, which was admitted to the Union five years after Louisiana, argued much like Texas does in this case to the effect that Congress had given her territory that Louisiana claimed under an earlier title. The Court held "[i]f it were true that . . . repugnancy between the two acts existed, it is enough to say that Congress, after the admission of Louisiana, could not take away any portion of that State and give it to the State of Mississippi." *Louisiana v. Mississippi*, 202 U. S. 40. This reasoning is equally applicable to Louisiana's western border.

I conclude in the alternative that the thalweg doctrine—widely and generally accepted—has not been constitutionally displaced by statutory language in this case.

The question remains whether acts of acquiescence and prescription have since replaced the thalweg with some other boundary between Louisiana and Texas. Although the Special Master concluded that the maps and other evidence in question supports both the conclusion that Louisiana has acquiesced in a mid-stream

boundary, rather than the claimed west-bank boundary, and that the mid-stream boundary thus recognized is in the geographic center rather than along the thalweg, I cannot agree. The vast majority of the maps in evidence do denominate a boundary between the banks of the waterways in issue. The quality of the boundary representation is, however, quite inadequate even to determine whether a geographic centerline designation was attempted. Moreover the main channel is not depicted, so that any possible variance from the thread of the stream is incapable of determination.⁴ Indeed, the language employed by the Master to describe these maps in the Appendix to his Report depicts this uncertainty; the terms "middle," "mid-Sabine," and "centerline" appear to be used indistinguishably, with only an occasional use of the more precise terminology "geographic middle."⁵ Acquiescence on the part of one State or prescription on the part of another should not be predicated on such an inadequate showing.

The case should be returned to the Special Master for hearings that will thoroughly explore the factual issues concerning the alleged acquiescence or prescription.

⁴ See generally Texas Exh. A, F. But see Louisiana Exh. K.

⁵ Report of Special Master, Appendix B.

